

1012

y4
Ar 5/2a
979-80/68

[H.A.S.C. No. 96-68]

GOVERNMENT

Storage

DOCUMENTS
HEARINGS
ON

MAR 2 1981

H.R. 6569

FARRELL ~~REGISTRATION~~ OF WOMEN
KANSAS STATE UNIVERSITY

BEFORE THE

MILITARY PERSONNEL SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

MARCH 5, AND 6, 1980

KSU LIBRARIES



A11900 222448



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1980

70-484 O

MILITARY PERSONNEL SUBCOMMITTEE

RICHARD C. WHITE, Texas, *Chairman*

G. V. (SONNY) MONTGOMERY, Mississippi MARJORIE S. HOLT, Maryland

ABRAHAM KAZEN, Jr., Texas

ELWOOD H. HILLIS, Indiana

ANTONIO B. WON PAT, Guam

LARRY J. HOPKINS, Kentucky

LUCIEN N. NEDZI, Michigan

BILL NICHOLS, Alabama

WILLIAM H. HOGAN, Jr., *General Counsel*

G. KIM WINCUP, *Counsel*

WILLIAM D. PRICE, *Professional Staff Member*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY PERSONNEL SUBCOMMITTEE,
Washington, D.C., Wednesday, March 5, 1980.

The subcommittee convened at 9:30 a.m., in room 2118, Rayburn House Office Building, Hon. Richard C. White (chairman of the subcommittee) presiding.

Mr. WHITE. Good morning.

Today the Military Personnel Subcommittee will receive testimony on H.R. 6569, an administration proposal to amend the Military Selective Service Act to allow the registration of women.

Improving the capability of the Selective Service System is an important issue—it is not merely symbolic. The Nation's current military manpower structure, the All-Volunteer Force, is seriously deficient in its capability to meet emergency requirements. Peacetime registration will provide a substantial step in improving mobilization capabilities.

The specific issue before the subcommittee this morning though is what contribution the registration of women will add to our national defense posture. That is the key consideration. We should not spend more money on defense needs than is required.

Although this morning's hearing is the only hearing the subcommittee has conducted on the legislative proposal to register women, we have held a series of hearings on the issue of women in the military in November of last year, and several hearings that directly relate to the subject earlier this year. The subcommittee has also asked the American Law Division of the Congressional Research Service to analyze legal precedents relating to the question of registering women, and has also been provided with a Justice Department memorandum on the subject. All of this material contributes to our deliberations on H.R. 6569.

Today's hearing will provide an opportunity for the subcommittee to again consider the views of the administration, and also to receive testimony from public witnesses.

[H.R. 6569 is as follows:]

[H.R. 6569, 96th Congress, 2d session]

A BILL To amend the Military Selective Service Act to allow the registration of both men and women

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Military Selective Service Act, as amended (50 U.S.C. App. 451 et seq.), is amended as follows:

- (a) Section 3 is amended by deleting "male" wherever it appears therein.
- (b) Section 6(a) is amended by substituting "persons" for "men" in the first sentence therein.
- (c) Section 16(a) is amended by substituting "persons" for "men" therein.

Mr. WHITE. We have a rather large number of witnesses today and the Chair will ask that prepared remarks be as brief as possible and be confined only to the issue of registering women.

Our first witness this morning will be Mr. Tom Bevill, a very outstanding Congressman from Alabama, who serves on the Appropriations Committee and who will be required to go to another meeting very shortly. After a very short statement, he wishes to introduce briefly one of his constituents, Mrs. Elaine Eidson, of Haleyville, Ala.

STATEMENT OF HON. TOM BEVILL, A REPRESENTATIVE FROM ALABAMA

Mr. BEVILL. Thank you, Mr. Chairman. I am honored to have the privilege of appearing before this distinguished committee, and we do have Mrs. Eidson, of Haleyville, Ala., from my district, who represents the Eagle Forum of that area. She has a very short statement, and we will make this very brief. We appreciate your giving us this opportunity to make this statement, and we will certainly try not to upset the schedule that you have, and so I would just like to point out that she is a very active civic leader of Haleyville, Ala., and we are all very proud of her. I endorse her statement, whatever she says. She and the Eagle Forum are certainly very concerned about the President's request for the registration of women, and she wants to give you their view. So if this committee will excuse me now, I will just present Mrs. Eidson and she will take over and make this statement, and these ladies and gentlemen will listen to you.

STATEMENT OF ELAINE EIDSON, HALEYVILLE, ALA.

Mrs. EIDSON. Thank you, Mr. Bevill. After that introduction, I will try not to say something that we hadn't expected.

Mr. Chairman and members of the committee: I greatly appreciate the fact that Mr. Tom Bevill has asked me to speak at this hearing to express the views of a large number of women in his district.

Several years ago when I first heard of the women's liberation movement, I cheered these women on. When some of my friends pointed out to me that if ratification of the Equal Rights Amendment were achieved, women would be drafted equally with men, I dismissed it as absurd. Now I realize—hopefully not too late—that this may very well happen, even without ratification of the amendment. So here I am today, where certainly even my wildest imagination never pictured, to express to you the feelings and convictions of what I consider myself to be—the average American woman. The vast majority of the people with whom I come in contact are in total agreement with me. The best interests of this country will not be served by drafting women.

In calling for draft registration, President Carter has said that women would not be put into combat. Yet an article, "Women in Combat Closer Than You Think," which appears in the March 3, 1980, U.S. News & World Report, contradicts the President:

American women in large numbers are destined to see combat in any future war involving U.S. military forces.

Such is the reality, whatever the fate of President Carter's controversial plan to register women for a possible draft.

I am the mother of three sons and one daughter. Two of my sons have served in the Armed Forces. I could, however reluctantly, accept the fact that my country might have to draft my other son—even against his wishes. I cannot accept the drafting of my daughter.

I think that the majority of American girls, including my daughter, are unfit both physically and emotionally to serve in the Armed Forces. The effects of life in a military camp for both males and females would, in my opinion, be devastating. From what I have read on the subject, I'm convinced that the use of females, even in some of the positions they already fill, will greatly weaken the effectiveness of any combat unit. The experiences of both Russia and Israel with female soldiers bears me out.

Recently, in the Birmingham News a letter to the editor was published where the writer asked: "If you hear a prowler in your house, do you send your wife to confront him?" The liberated women do not speak for me; nor do they speak for the majority of Americans. I may once have been one of the "silent majority," but no more. We've had enough. This, I will not stand for, nor will the American people stand for it. You cannot draft our women.

I think Senator Nunn from Georgia has made a very pertinent statement when he said, "If you don't plan to draft women, there is no need to register them. If you don't plan to put them in combat, there is no need to draft them."

Mr. WHITE. Thank you very much, Mrs. Eidson, for a very succinct statement.

Are there any questions at all?

Mrs. Holt.

Mrs. HOLT. I would like to make a comment and commend the lady for making this statement. She certainly expressed my views much better than I can express them.

I think what we are here on this committee to do is to come up with the best military that we can for this country, and the testimony that we have had has indicated that there is absolutely no reason, no military reason, to draft women, and I think you are absolutely right.

I have made this statement over and over again on national television, that the majority of the American women want to stay out of the military. This is not taking anything away from the very fine women who are doing a great job in the military, who want to be there voluntarily, and we do need them. They are doing a splendid job. We want to open up every opportunity for them, but the mail that I am getting from all over this country indicates that this Nation is not ready to send its women into combat, and I certainly appreciate your making this statement and coming up here and helping us out with this tough question.

Mrs. EIDSON. If I didn't feel so violent about it I wouldn't have come. You couldn't drag me.

Mrs. HOLT. That is all I have.

Mr. WHITE. Mr. Montgomery.

Mr. MONTGOMERY. I live in Mississippi. Where is Haleyville?

Mrs. EIDSON. A few miles north of Birmingham, kind of in the foothills there. It started out as a rebel community.

Mr. MONTGOMERY. I certainly agree with your statement this morning. One of the matters that concerns me—that you testified on—is we are now putting women in combat units. They are not holding combat positions such as carrying a rifle or driving a tank, but they are used in supporting roles. It seems to me when you start registering them, it is another step forward to putting them into combat roles. Quite frankly, I am concerned that we have women in combat units even though they are assigned to noncombative support roles, and some of them are going to get killed if we move them in with the men in the combat roles.

Do you have any experience in your research about the women in combat in Israel?

Mrs. EIDSON. The Israelis used them when they first were fighting the Arabs, but they found out that this just didn't work. The idea of seeing a woman mutilated in battle, let me put it this way, it blew the minds of the male soldiers. They could not stand it. And, also, what happens to female prisoners of war? So Israel drafts their women for a shorter period of time than the men and they use them in strictly noncombatant roles.

Mr. MONTGOMERY. Thank you very much.

Mr. WHITE. Mr. Nichols, did you have a question?

Mr. NICHOLS. No, Mr. Chairman.

Mr. WHITE. Mr. Won Pat.

Mr. WON PAT. Yes. Thank you, Mr. Chairman.

Mrs. Eidson, I do want to thank you for your statement. I think it is very candid and expresses your sentiment. However, I do not necessarily share your sentiment. Let me say that I have two daughters in the military.

Mrs. EIDSON. Sir, I am not saying military is not for every American woman. I am saying it is not for the majority. It would take my daughter—and I am thinking of her closer friends—2 days in basic training before I know there would be total havoc in that camp. I can see her saying, "Oh, you have got mud on my pants. I can't fix my hair." This is the type of girls they are.

Mr. WON PAT. Let me say also I agree fully with you that no one should be assigned to a job that is physically and mentally or emotionally unfit, whether they be men or women. Don't you agree?

Mrs. EIDSON. Yes, I agree with that.

Mr. WON PAT. And today we find that women are participating in practically every area of endeavor.

Mrs. EIDSON. Some women.

Mr. WON PAT. Yes, but you find women in practically every endeavor.

Mrs. EIDSON. That is fine if they choose to be there.

Mr. WON PAT. That is what I meant. I am going to say I think that women should not be forced to be drafted to combat.

Mrs. EIDSON. No, sir, I don't think that is women's role.

Mr. WON PAT. I think women are capable and if they volunteer to be assigned to that job, I don't think they should be prohibited.

Mrs. EIDSON. I don't think they should be in combat, sir, but I am not an expert on the fact, and I do not have them all at my fingertips.

Mr. WON PAT. What I am saying is that they are physically and emotionally able and they volunteer for that particular job, that MOS, as we call it in the military, then I believe that they should belong. That is my point.

Mr. WHITE. Thank you, Mr. Won Pat.

Mr. Nichols.

Mr. NICHOLS. Mr. Chairman, I think that I would like to perhaps clarify the lady's position and say, Mr. Chairman, the position she has espoused is certainly shared by the large majority of mail that I get from my constituents in Alabama. I appreciate this morning the opportunity to hear your testimony before the committee. The fact that you have had two sons in the military indicates to me that you are not necessarily opposed to military service in any way.

Mrs. EIDSON. No, sir.

Mr. NICHOLS. I know you must be familiar with the fact that in World War II we utilized the services of 300,000 women in that engagement. They did not serve in any way in combat roles. I believe I am correct. We did have some woman pilots who ferried planes from the United States to France for our people to use over there. I don't gather from your testimony that you are necessarily opposed to women serving in the military per se who wish to serve in certain roles outside of combat service?

Mrs. EIDSON. No, I am not opposed to that.

Mr. NICHOLS. What you are opposed to is mandatory registration of women or drafting women to serve in the military?

Mrs. EIDSON. Yes, sir, I am.

Mr. NICHOLS. Thank you, Mr. Chairman.

Mr. WHITE. Thank you, Mr. Nichols.

I would like to thank you very much for coming this morning. I appreciate your attendance.

We will take the next witness, Hon. Robert B. Pirie, Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, and Hon. Bernard D. Rostker, Director of the Selective Service System, and Mr. Larry L. Simms from the Office of Legal Counsel.

I believe you are the spokesman this morning, Mr. Pirie?

Mr. PIRIE. Yes, Mr. Chairman. I have a very brief statement.

Mr. WHITE. We are pleased to have you here.

STATEMENT OF HON. ROBERT B. PIRIE, JR., ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER, RESERVE AFFAIRS AND LOGISTICS; HON. BERNARD D. ROSTKER, DIRECTOR, SELECTIVE SERVICE SYSTEM

Mr. PIRIE. Mr. Chairman, I appreciate very much the opportunity to appear before the committee and to reiterate the views on the registration of women that not only I hold, but the Secretary of Defense at present holds.

The Defense Authorization Act for fiscal year 1980 called for the President to send Congress a plan for the reform of the Selective Service System. The Congress asked for a review of 10 issues. One of those issues was whether women should be subject to registration and

induction for training and service under the Military Selective Service Act. In his response to the Congress, the President announced that he has decided to seek the same statutory authority in regard to women as is now the case for men—authority to register, classify and examine women for service in the Armed Forces.

There are 150,000 women serving successfully in the active armed services today and by 1985, it is estimated that there will be approximately 250,000 women in the Armed Forces. The Reserve Forces now have about 60,000 women serving with projections of about 100,000 by 1985. Women in the military today participate in a vast array of occupations. About 60,000 enlisted women hold jobs in historically non-traditional occupations. Large numbers of military women work in occupations such as electronics, communications, navigation, radar repair, jet engine mechanics, drafting, surveying, ordnance, transportation and meteorology and do so very effectively, as has been shown by numerous DOD studies and tests. The work women in the Armed Forces do today is essential to the readiness and the capability of the forces. In case of war that would still be true, and the number of women doing similar work would inevitably expand beyond our peacetime number of 250,000.

Women have traditionally held the vast majority of jobs in fields such as administrative/clerical and health care/medical. An advantage of registration for women is that a pool of trained personnel in these traditionally female jobs would exist in the event that sufficient volunteers were not available. It would make far greater sense to include women in a draft call and thereby gain many of these skills than to draft only males who would not only require training in these fields but would be drafted for employment in jobs traditionally held by females. A further advantage would be to release males currently holding noncombatant jobs for reassignment to combat jobs.

It is doubtful that a female draft can be justified on the argument that wartime personnel requirements cannot be met without them. The pool of draft eligible men—ages 18 to 26—is sufficiently large to meet projected wartime requirements. Furthermore, men, unlike women, can be assigned to any military position, including close combat jobs.

However, women can be used in large numbers in the peacetime and wartime force. The maximum number of women that can be used is subject to three constraints: (1) legislative prohibitions against the use of women in certain military positions, (2) the policy to reserve certain assignments, such as ground combat roles, for men only, and (3) the need to reserve a substantial number of noncombat positions for men in order to provide a pool of ready replacements for ground combat positions.

A change in the Selective Service Act to permit the registration and induction of women would not necessarily mean that significant numbers of women would be drafted. If women were subject to the draft, the Department of Defense would determine the maximum number of women that could be used in the Armed Forces, subject to existing constraints and the needs of the military services to provide close combat fillers and replacements quickly. We estimate that this might require at least 80,000 additional women over the first 6 months. If there were not enough women volunteers, a separate draft call for women would be issued.

The President's decision to ask for authority to register women is based on equity. It is a recognition of the reality that both men and women are working members of our society. It confirms what is already obvious throughout our society—that women are now providing all types of skills in every profession. The military is no exception. Since women have proven that they can serve successfully as volunteers in the Armed Forces, equity suggests that they be liable to serve as draftees if conscription is reinstated.

Although the equity argument is important, it does not lead to the conclusion that men and women should be inducted in equal numbers. Equity is achieved when both men and women are asked to serve in proportion to the ability of the Armed Forces to use them effectively. Therefore, the administration believes that the Military Selective Service Act should be amended to provide authority to register women as well as men.

It is in the interest of national security that, in an emergency requiring the conscription for military service of the Nation's youth, the best qualified people for a wide variety of tasks in our Armed Forces be available. The performance of women in our Armed Forces today strongly supports the conclusion that many of the best qualified people for some military jobs in the 18-26 age category will be women. The administration strongly believes they should be available for service in the jobs they can do, just as men will be available for jobs they can do.

Mr. Chairman, I have with me Mr. Larry Simms of the Justice Department. As you said, Mr. Simms is prepared to address the issue raised at an earlier hearing with respect to the constitutionality of registration of women.

Mr. WHITE. Do you have a statement you would like to synopsise and we can go from there?

**STATEMENT OF LARRY SIMMS, DEPUTY ASSISTANT ATTORNEY
GENERAL, OFFICE OF LEGAL COUNSEL**

Mr. SIMMS. Yes, Mr. Chairman, I can. I have already provided the staff with a copy of the opinion, which was signed by Assistant Attorney General Harmon, the head of my office, addressed to Deputy Director of the Office of Management and Budget on the 21st of January of this year.

[The following information was received for the record:]



United States Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

31 JAN 1980

MEMORANDUM FOR HONORABLE JOHN WHITE
Deputy Director
Office of Management and Budget

Re: Constitutionality of All-Male Draft
Registration

The President currently has the power under § 3 of the Selective Service Act, 50 U.S.C. App. § 453, to require males between the ages of 18 and 26 to register for possible induction into the military service. His power to induct registrants under that Act expired, with limited exceptions not pertinent here, on July 1, 1973. You have asked for our opinion whether the President may, by proclamation, constitutionally reinstitute a registration program otherwise authorized by § 453 in view of the fact that § 453 does not authorize the registration of females. For reasons stated hereafter, we believe that the congressionally mandated policy expressed in § 453 is constitutionally defensible. We also believe that because Congress is likely to reconsider the basis for this gender-based classification in the context of legislation reinstituting the President's power to induct registrants, the constitutional issues raised by it are generally ripe for a thorough review.

Although the treatment of gender-based classifications by the Supreme Court has not produced to date any general principles that are capable of easy application, we believe that two cases decided by the Court applying the equal protection component of the Fifth Amendment to federal action related to military affairs provide the most likely basis for assessing the constitutionality of the Selective Service Act. In Frontiero v. Richardson, 411 U.S. 677 (1973), the Court, without a majority as to rationale, held unconstitutional a statutory scheme under which male members of the uniformed services were permitted to claim their spouses as "dependent" for purposes of obtaining increased benefits whereas female members were obliged to demonstrate that their spouses were in fact "dependent." In 1975, the Court read its decision in Frontiero as standing for the proposition that administrative convenience, standing alone, was an insufficient justification under the Constitution for the gender-based classification at issue in that case, Schlesinger v. Ballard, 419 U.S. 498, 510 (1975). In Ballard, the Court upheld the constitutionality of a statutory scheme which at that time treated men and women naval officers differently for purposes of promotion. In reaching its conclusion, the Court stated:

"[T]he operation of the statutes in question results in a flow of promotions commensurate with the Navy's current needs and serves to motivate qualified

commissioned officers to so conduct themselves that they may realistically look forward to higher levels of command. This Court has recognized that 'it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.' . . . The responsibility for determining how best our Armed Forces shall attend to that business rests with Congress, see U.S. Const., Art. I, Section 8, Cls. 12-14, and with the President. See U.S. Const., Art. II, Section 2, Cl. 1." 1/

We believe that the language from Ballard quoted above, while not necessary to the Court's holding in that case, strongly indicates a disposition on the part of the Court to apply the equal protection component of the Fifth Amendment with special circumspection in the context of military affairs. Indeed, the Court noted that in 1974 the Department of Defense, "[a]pparently believing that the need for a tenure differential has subsided," had submitted legislation to Congress to eliminate the gender-based distinction at issue in Ballard. Rather than suggesting that this position taken by the Department of Defense before the Congress undermined the Government's argument in that case, the Court stated:

"These developments no more than reinforce the view that it is for Congress, and not for the courts, to decide when the policy goals sought to be served . . . are no longer necessary"

419 U.S., at 510 n.13. The Government's power to require compulsory military service has historically been recognized as a prime object of the Constitution, see Selective Draft Law Cases, 245 U.S. 366, 378 (1918), and thus would logically command greater judicial deference than the governmental interests directly at stake in Frontiero and Ballard.

The circumspection with which the courts have applied equal protection principles in the military arena is nowhere more in evidence than in the context of litigation challenging the constitutionality of the gender-based classification under the Selective Service Act. In United States v. Reiser, 394 F. Supp. 1060, 1066 (D. Mont. 1975), the District Court rejected arguments advanced by the

1/ 419 U.S., at 510 (emphasis added). We note that the language quoted in the text above from Schlesinger v. Ballard regarding judicial deference to Congress in the field of military affairs apparently reflects the Court's response in that case to the argument made by the Solicitor General:

[i]t is particularly important . . . that the courts accord to the legislature significant flexibility as to classification based on sex, because the issue here relates closely to the organization, maintenance, and effectiveness of the armed forces. In cases such as this the legislature's judgment as to military practicality requires deference.

Government that the gender-based classification in the Selective Service Act was essential to the "national security." 2/ On appeal to the Ninth Circuit, the Government prevailed. In a three-paragraph opinion, that court found "a clear rational relationship between the government's legitimate interests, as expressed in the [Selective Service] Act, and the classification by sex" United States v. Reiser, 532 F.2d 673 (9th Cir.), cert. denied, 429 U.S. 838 (1976). 3/

Although not extensively reasoned, we believe that the Ninth Circuit's opinion in United States v. Reiser, supra, is direct and persuasive support for reading Ballard to require especially deferential treatment by the courts of gender-based classification related to military affairs. In addition, the District Court for the District of Delaware has effectively interpreted Ballard in the same manner. See Kovach v. Middendorf, 424 F. Supp. 72, 79 (D. Del. 1976). 4/

The Ninth Circuit's disposition of the constitutional attack on the Selective Service Act was not without precedent. Indeed, in a series of cases dating from 1968, various district courts and courts of appeals have upheld the constitutionality of the Selective Service Act against challenges directed to the same gender-based classification involved here. In United States v. Baechler, 509 F.2d 13, 14-15 (4th Cir. 1974), cert. denied, 421 U.S. 993 (1975), the Fourth Circuit, after acknowledging that females then were performing vital services in the armed

2/ The Government's argument in Reiser, as restated by the District Court, was--in the main--as follows:

"Only a limited number of women would be as suited as men for combat assignments, and in order to assure that sufficient numbers of combat qualified soldiers were members of the armed forces, Congress would have to send most of the women of eligible age through the induction process in order to find the qualified few, and it would be unreasonable to disrupt the lives of millions in order to find a very few."

394 F. Supp. at 1066-67.

3/ In Reiser, the Ninth Circuit cited as authority for its decision the case of Campbell v. Beaughler, 519 F.2d 1307, 1309 (9th Cir. 1975) cert. denied, 423 U.S. 1073 (1976). In Campbell the Ninth Circuit read "recent Supreme Court decisions" as requiring "only a rational relationship between legitimate governmental interests and the sex classification" involved and singled out Schlesinger v. Ballard as being particularly pertinent without elaborating on Ballard. See 519 F.2d at 1309.

4/ In Kovach, the District Court explicitly adopted the analysis of the court in United States v. Yingling, 368 F. Supp. 379 (W.D. Pa. 1973), stating in dictum that the Selective Service Act would satisfy even a "strict scrutiny" standard because of the "compelling" governmental interest in "providing for the common defense in a manner which would both maximize the efficiency and minimize the expense of raising an army." Analytically, we believe that the reasoning of both the Yingling and Kovach courts suggests that they were applying a classic "rationality" standard.

forces, nevertheless concluded that: "Considering the nature of the demands of military service, we cannot say that Congress had no rational basis for the distinction based on sex." The other cases noted in the margin are of similar effect. 5/ In addition to these cases, the constitutionality of the gender-based classification involved here is currently the subject of litigation in a federal district court. 6/

Notwithstanding the fact that the gender-based classification historically maintained in the Selective Service Act has been upheld on many occasions in the past by lower federal courts, it may be argued with some force that the Selective Service Act would no longer pass constitutional muster under recent Supreme Court cases which have articulated a standard of review to be applied to gender-based classification which appears to be more demanding than a mere "rational basis" test. For example, in Califano v. Webster, 430 U.S. 313, 316-17 (1977), the Court reiterated its position, articulated the Term before, that:

"To withstand scrutiny under the equal protection component of the Fifth Amendment's Due Process Clause, 'classifications by gender must serve important governmental objectives and must be substantially related to achieve-

5/ United States v. Bertram, 477 F.2d 1329 (10th Cir. 1973); United States v. Camara, 451 F.2d 1122 (1st Cir. 1971), cert. denied, 405 U.S. 1074 (1972); United States v. Fallon, 407 F.2d 621 (7th Cir.), cert. denied, 395 U.S. 908 (1969); United States v. Offord, 373 F. Supp. 1117 (E.D. Wis. 1974); United States v. Yingling, 368 F. Supp. 379 (W.D. Pa. 1973); United States v. Dorris, 319 F. Supp. 1306 (W.D. Pa. 1970); United States v. Cook, 311 F. Supp. 618 (W.D. Pa. 1970); United States v. Clinton, 310 F. Supp. 333 (E.D. La. 1970); United States v. St. Clair, 291 F. Supp. 122 (S.D. N.Y. 1968).

In a memorandum filed in the Supreme Court opposing the granting of a petition for a writ of certiorari in United States v. Baechler, supra, the Solicitor General took the position that the Selective Service Act was passed:

to enable the government to raise an army for possible combat service and hence the disparate treatment accorded to males rests upon a ground of difference having a fair and substantial relation to the object of the legislation. Reed v. Reed, 404 U.S. 71, 76. Cf. Schlesinger v. Ballard, No. 73-776, decided January 15, 1975.

6/ A civil suit challenging the constitutionality of the Selective Service Act on a variety of grounds has been pending since 1971 in the Eastern District of Pennsylvania. Goldberg v. Tarr, Civ. No. 71-1480 (E.D. Pa., three-judge court). In 1973 the Court of Appeals for the Third Circuit vacated the judgment of the district court dismissing the plaintiffs' sex discrimination count, and remanded for a determination on, inter alia, the plaintiffs' standing to sue. Rowland v. Tarr, 480 F.2d 545 (3d Cir. 1973). In the fall of 1979 the government once again moved to dismiss on grounds of mootness and standing; the motion was argued in December, and is awaiting decision by the court.

ment of those objectives.' Craig v. Boren, 429 U.S. 190, 197 (1976). 7/

Should the Court disagree with the lower courts' reading of Ballard and, instead, require the Government to demonstrate both an "important governmental objective" and a substantial relationship between the gender-based classification and that objective, the constitutionality of the Selective Service Act becomes considerably more problematical.

We have no doubt that the general objective of that Act involves an important governmental interest sufficient to pass muster under the first prong of the Boren test. As indicated above, the power of the Government to require compulsory service is a primary object of the Constitution. Cf. Owens v. Brown, 455 F. Supp. 291, 304-05 (D.D.C. 1978). As put in Owens, however, the remaining "question concerns the degree of correlation that must be shown between the differences in treatment accorded to men and women and the objectives sought to be achieved." 8/

Establishing a correlation between the objective of the Selective Service Act and the gender-based classification found in that Act presents both practical and analytical problems that are not so easily overcome as they have proven to be under a lesser standard of review.

On the practical side, the absence of any specific congressional consideration of the statistical relationship between the number of persons subject to registration and conscription and the objective of obtaining sufficient combat troops--the primary argument historically advanced by the Government and accepted by the courts to sustain the Selective Service Act--would suggest the importance of considering current empirical evidence, which could be collected by the Department of Defense, of the existence of such a relationship. 9/ This evidence would presumably provide a

7/ This language from Boren has since been repeated in Orr v. Orr, 440 U.S. 268, 279 (1979) and Caban v. Mohammed, 441 U.S. 380, 388 (1979).

8/ In Owens, plaintiffs successfully challenged the absolute statutory bar to Navy women's serving on any but hospital ships. In its opinion, which was not appealed, the court did not refer to the Kovach case, in which the same statute was held constitutional. See note 4, supra. The statute was subsequently amended by Congress to permit the assignment of Navy women to noncombat shipboard duties.

9/ We understand that the Department of Defense is prepared to provide analyses to demonstrate that, on the best evidence available, conscription under the Selective Service Act would have to involve substantially greater numbers to achieve enough persons fit for combat were the gender-based classification in the Selective Service Act to be eliminated. We also note that current analyses suggesting a basis for the gender-based classification in the Selective Service Act are "entitled to consideration" in litigation challenging the Act. See Owens v. Brown, 455 F. Supp. 291, 306 n.55 (D.D.C. 1978).

basis for demonstrating both increased costs to the Government and substantial and unnecessary disruption to the lives of persons that would result from a draft of males and females.

Analytically, we believe the linchpin of a successful argument supporting the constitutionality of an all-male registration under a stricter standard is the proposition that Congress may, as a matter of substantive constitutional law, prohibit the service of females in actual combat based on either generalization regarding their physical characteristics or on psychological factors. We believe that this proposition, which would appear to be the underlying basis for most of the court decisions in this area, would be accepted by the courts. Once this proposition were accepted, and assuming the relationship discussed in the preceding paragraph had been established, we believe the Court would find that whatever incidental "burden" or stigma might be placed on females by virtue of the Selective Service Act itself would largely be neutralized by the ability of females to volunteer for service in the armed forces and justified by any substantial efficiency gained through that Act in producing persons for combat duty.

Viewed from the perspective of the constitutional rights of males, and assuming Congress' power to prevent females from filling combat positions, the constitutional injury suffered by a male under the Selective Service Act would be the burdens imposed by the registration requirement, and the greater probability that he would be drafted to fill a noncombat position. If a male subject to registration (and induction) under the Selective Service Act could convince a court that the Government could, with relative ease, fashion the registration/conscription process in such a way as to conscript separately for combat and noncombat positions, the rationale for the constitutionality of the Act might as a factual matter be reduced to one of administrative convenience. Thus, under the higher standard of scrutiny articulated in *Boren*, it would be necessary for the Government to produce contemporaneous evidence establishing substantial and unavoidable costs, financial and otherwise, in the administration of such a registration/conscription system in order to uphold the Act.

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

Mr. SIMMS. I can very briefly give you a summary of that opinion.

Before doing so, I would like to note that the specific issue of the constitutionality of an all-male registration and draft is a matter that is currently in litigation before a three-judge Federal court in Philadelphia.

Mr. WHITE. All-male draft or registration?

Mr. SIMMS. All-male registration and draft. In this case the only issue the court can decide is the constitutionality of an all-male registration since there is no current authority to draft.

Mr. WHITE. That is compared to a registration of men and women. That is the issue: Can you register men only.

Mr. SIMMS. Yes, sir. I have never heard anyone suggest that it would be unconstitutional to register and draft women.

Because the issue is in litigation, any comments I have should not be construed as any action on the part of the Department of Justice to litigate that case in the press.

The Department is defending the constitutionality of the all-male registration in that case, and I would like to give you a little background of how we view this issue by way of simply referring to the opinion that is a matter of record.

First, that litigation is before a three-judge court. The Court of Appeals for the Third Circuit several years ago determined that this issue presented a substantial constitutional question, which was necessary in order to give the three-judge court its statutory jurisdiction. The issue has never been decided by the Supreme Court of the United States on the merits, so we are in an area where we have to appraise it solely by analogy to recent and somewhat older Supreme Court cases in this area as well as a fair amount of law made in the lower Federal courts.

I believe that the most salient point upon which our analysis is based in our legal opinion is that the Supreme Court has shown a great tendency in the area of military affairs to defer to judgments made by Congress. We believe that, if this particular issue were to reach the Supreme Court of the United States, which it may well—though not necessarily in this particular case that is in litigation in Philadelphia—the Court would continue as it has, for example, very recently in the first amendment area, to show great deference to the judgments made by the Congress. That is not to say, of course, that the Court would accept any judgment and indeed the Court has in the past held unconstitutional judgments made by the Congress in the sex discrimination area, touching on although not central to military affairs.

It is also our belief that because the Court has shown the kind of deference it has shown for the judgments made by Congress in this area, the responsibility is all the greater on Congress in considering this issue to consider it wisely and to consider it thoroughly and to make a careful judgment if it decides to either reject or accept the proposal that has been placed before it by the administration.

In our analysis you will note that, in support of the constitutionality of the all-male draft, we do not call on in any way the legislative history or reasoning of the Congress which in 1949 adopted the law which the administration is presently urging be changed. The reason for that is very simple. In virtually all of the lower court cases which

have reached a judgment on this issue, the legislative history of the 1949 act has been totally unhelpful to the Government in defending its constitutionality.

The reason is that legislative history is replete with—and unfortunately replete—only with the kind of sexual stereotypes and that kind of thinking that the Court has subsequently held will not support the constitutionality of a legislative act of Congress or of the State legislatures.

What the Government has had to do from 1968 up until the present in litigating these cases is work primarily with people in the Department of Defense to come up with reasons why Congress could justifiably and constitutionally have made the decision that it made in 1949. This is an accepted way of courts looking at legislation.

This issue is now back before Congress, and speaking solely for the Department of Justice as litigator, it should be fairly obvious to this committee that the defensibility of the all-male registration is something on which Congress perhaps should speak out clearly and formulate the kind of record, if indeed, it chooses to reject the administration's proposal, which will be helpful rather than hurtful in the litigation.

As a final comment, I would just make reference back to something which I understood Mrs. Holt to say during the testimony of the first witness. The issue is not in the constitutional context—as phrased by Congresswoman Holt—whether there is a military reason to register or draft women, but whether there is a military or other reason to justify not registering women. That is the burden on the Government.

The Department of Justice is under a great responsibility to defend the constitutionality of any act passed by Congress. That is the burden we will have to carry. As to whether it can be carried at this point, we believe it can if the factual basis for it is there, and I think that whether it is there is largely a matter within the jurisdiction of this committee and Mr. Pirie and his peers at the Department of Defense.

Mr. WHITE. Well, let me say our role is that of guardian of the security of this Nation. We are not serving the same purpose you are in that respect.

Mr. SIMMS. Let me clarify that, Mr. Chairman. The only point I was making in connection with our defending the constitutionality of an all-male draft is that the Department of Justice will have to convince the court that there is a military or other reason not to register women. In this case I am using the draft and should focus on registration. There is a military purpose not to draft women. That is the burden we will carry, and that is the only point I was making.

Mr. WHITE. What if the ERA should be ratified by the respective States? Suppose it does pass, would you have a different view on it vis-a-vis ERA?

Mr. SIMMS. I would say, Mr. Chairman, that now Justice Rehnquist, who was the head of my office shortly after the Equal Rights Amendment had been proposed by the Congress, formally advised—I can't remember who the addressee of the opinion was—that in his view if the Equal Rights Amendment were ratified, given the history of that proposed amendment, an all-male registration would indeed be held unconstitutional.

Mr. WHITE. Mr. Pirie, to synopsise again where we were before, your principal thrust is a matter of equity, while this committee, in its need for looking out for the national security, our decision, I think, generally is going to be based on the question of need.

Now, as I remember your previous testimony and that of Dr. Rostker, at one time you did say it is a matter of security.

Mr. PIRIE. Yes. I said I believed it was in the national security interest of the United States to do so.

Mr. WHITE. We are interested in developing a reservoir of manpower for the purpose of quick mobilization and training for the combat army, am I correct on that, Mr. Pirie?

Mr. PIRIE. That is the primary need for the initial inputs to the Armed Forces from the Selective Service System.

Mr. WHITE. To me the only testimony you gave earlier was that the drafting of women would enable some men to be placed so that they could go to combat.

Mr. PIRIE. That is one of the thrusts of our testimony; yes, sir.

Mr. WHITE. But on further questioning, the testimony from you is that the numbers of billets that would thus be affected would be something in the nature of 19,000.

Mr. PIRIE. No; that was in response to Mrs. Holt's question about the current shortage of Active Army personnel.

Mr. WHITE. That was my question to you. I asked how many people would be displaced to go to combat, and what are we talking about, and you said 19,000.

Mr. PIRIE. I am not sure how that came about; 19,000 happens to be the number short in the Active Army today, Mr. Chairman, but we are looking at the possibility of using up to 80,000 women out of the first 650,000 individuals who volunteer or are inducted, and that turns out to be the same proportion as we expect to be in the Armed Forces in 1985.

The shortage of men in the Active Army is not our only concern, of course. In spite of efforts to effect a balance, the Army Selected Reserve and Guard are short about 130,000 people, and the Individual Ready Reserve is short between 200,000 and 300,000 people. So there are plentiful requirements for men to be released to combat forces.

Mr. WHITE. The testimony has further shown that 95 percent of the positions or specialties in the services today are open to women.

Mr. PIRIE. That is correct.

Mr. WHITE. Well, if you register 2 million women, and it will probably be 4 million with women in the first year, according to the plan, you would be calling up two age groups, and the next age group in January 1981, which is 6 million.

Mr. PIRIE. Yes, sir.

Mr. WHITE. But if you register all of the women and the men, and we had a callup for mobilization, there is no way with the present facilities that you could train the women. You couldn't call them because there would be no place to put them for training.

Mr. PIRIE. The intention, as I said, Mr. Chairman, is to call as many as could be used by the Armed Forces effectively, and I indicated that is on the order of about 80,000. The call would be based on the difference between the number of volunteers that appeared and the number of positions available.

Mr. WHITE. Women are volunteering very well, and the quality and caliber is very high. In 1985 women are going to fill something like 13 percent of the billets.

Mr. PIRIE. That is correct, Mr. Chairman.

Dr. ROSTKER. Mr. Chairman, may I try to put the issue of equity in a different perspective as it pertains to the Selective Service System? The fundamental task of the Selective Service System is to determine in a fair and consistent way who will go in a conscription if not all will go. It is consistent with the history of Selective Service that the base on which we draw should be as broad as possible. Historically we have registered, with few exceptions, all of the available men in a specific age group.

I am sure that the men who are drafted don't necessarily want to be there. The fact is today, given the size of the pool and the requirements of the Defense Department, not all will be drafted. I think it behooves us then to have as large a base as possible commensurate with the jobs that the Defense Department requires to be done, and the skills and abilities of the people who are available to do those jobs. That would be the fairest way to choose in terms of those who go and those who do not go.

I think it is for that reason that the administration, consistent with the philosophy of Selective Service, has asked the Congress for authority to create the largest pool possible, to spread the chances of conscription over the largest numbers of people, in order that we may meet our manpower requirements in a fair and equitable manner.

Mr. WHITE. Thank you.

Mr. Montgomery.

Mr. MONTGOMERY. I have two questions. Mr. Secretary, you are in charge of the manpower needs of the military; isn't that correct?

Mr. PIRIE. I am the Secretary of Defense's official responsible for policy in that area; yes, sir.

Mr. MONTGOMERY. If we had a mobilization and we had to have a draft, who would be the individuals that you would have to call up that were needed the most?

Mr. PIRIE. The immediate requirement would be for fillers and casualty replacements for the combat army.

Mr. MONTGOMERY. For combat army?

Mr. PIRIE. Yes, sir.

Mr. MONTGOMERY. Why do we want to clutter up the situation by talking about women? What we are really going to need, what the military needs now, both the Army and the National Guard, we need men. We need men to fill the combat roles. We don't need women. Why do we want to create a problem? We have a hard enough time to get men in peacetime registration.

Mr. PIRIE. Not only will we need to expand combat arms, and as I said, that is the most pressing need, but we also will need to expand the support establishment at the same time to allow the combat arms to carry out their function successfully. The support establishment now uses women very effectively, and in wartime I think the same would be true.

Mr. MONTGOMERY. You are saying in support?

Mr. PIRIE. The support establishment. In wartime some women would be needed for that function.

Mr. MONTGOMERY. In past history, volunteers are volunteers mainly to get into noncombative support roles. I don't think you have any problem there.

To the Director of Selective Service, there has been some confusion on the data that was issued by the Selective Service System that registration could be done in 7 days. After talking to you and others, I believe you backed off from that 7 days that registration could take place, is that correct?

Dr. ROSTKER. That is correct.

Mr. MONTGOMERY. That ought to be put on the record. Could you tell us briefly about how much time it would actually take. I think it is a very important point, that we can't just register people in 7 days' time and get all of the raw data we need.

Dr. ROSTKER. Clearly the analysis presented in the draft report assumed that the system was completely established, and everything in it would work exactly as planned. As you are aware, such a system does not exist today and will take considerable time to establish. Moreover, the timetable was based upon a number of assumptions which need to be reviewed in light of comments received from other agencies during the last several weeks as we planned for a spring registration. For example, the January 16 draft report that you refer to had a timetable that assumed that the registration would take place, that we would activate the Postal Service to distribute registration materials, undertake an effective public information program, and get the appropriation through Congress in about 3 days.

Our best judgment today, after intensive work with a number of Federal agencies, in particular the U.S. Postal Service, is that even under the best of circumstances it would take considerably longer to activate the system.

Another factor which has come under close examination over the last several months is the movement of completed registration forms from the registration sites to the data-processing centers. In the January 16 draft report, we assumed that in less than 24 hours we could sort at least 1 million registration forms, move the forms from 34,000 local post offices to 300 regional centers, and deliver them to as many as 13 IRS and SSA keypunch facilities.

Upon further consideration of transportation requirements, the possible impacts of fuel shortages, the uncertainty of weather conditions, as well as other external constraints, we had to make a substantial upward revision in these estimates.

One may ask, as you have, what if our January 16 estimates are overly optimistic—what is our best estimate today? I would have to say that the experience of working through the detailed plans for this spring's registration and discovering holes daily that need to be filled, the difficulty of being too specific when making such estimates is evident.

It did seem likely that given sufficient time, sufficient resources, and the ability to clearly develop our operating procedures, train people and test our plans, that we should be able to meet the DOD requirements without premobilization registration. But our experience since January 16 clearly shows that this could not be done. We might have a registration in 4 days, start to issue induction orders in 7 or

begin inductions in 17 days. In other words, under the best of circumstances we believe we are looking at a time frame that is considerably longer than that portrayed in the draft report.

I would also like to put that draft report in a slightly different context. That document was a draft. It was not intended for wide circulation within the administration. It was not intended for circulation to the Congress. It was intended to be circulated to an inter-agency working group for comments and corrections. In fact it was under revision at the time of the President's announcement.

I am concerned that Members of Congress are taking that report as a definitive statement of actual selective service capabilities and are, in fact, misrepresenting the report in the debate that has ensued. Clearly, Selective Service to date does not have the capability to respond in an emergency. The projected timetables are not definitive and, most importantly no matter how good any timetable looks on paper, it is still a contingency plan and can never be equated with the certainties provided by an up and running premobilization registration system.

Mr. MONTGOMERY. Thank you, sir.

Mr. WHITE. Mrs. Holt.

Mrs. HOLT. Thank you, gentlemen. Our purposes here is to raise the best military that we can for the least amount of money, and that is the way we look at it. If we listen to the witnesses, not one military witness has said that there is any military reason to register women, and, Mr. Pirie, when I asked you if it was the best management practice you hesitated for some time and then came back and said it was because it was equitable—that it was the best management practice. But I think we all realize that it isn't. It is going to create numbers that you can't handle. There is no way in the world that you can take a percentage of women and another percentage of men and try to sort them out. You are going to be getting more volunteer women than you can possibly use in the support roles.

Now, you say equity is achieved when both men and women are asked to serve in proportion to the ability of the Armed Forces to use them effectively. You get back to the same point there. Somewhere you are drawing the line. If it is unconstitutional not to register them, then it is unconstitutional not to put them out on the front lines whether they are pregnant or whether they are dropping out because they can't cope with it, whether you have the sexual harassment problem that we are trying to fight right now. It does create management problems. I am not saying that we can't overcome them, but that is not the purpose of the military. The purpose of the military is to defend this country. I think Judge Sirica was absolutely right when he said—and I think you bore that out—it is perfectly right and constitutional if we classify if it is done for the common good of the country, for national defense. When we classify by age, we are not going to say that everybody has got to go. You have the physically handicapped. You can't make this the same thing you have made the school system.

What would you do, Mr. Pirie, if you were going to register a percentage of women? Would you just say we need a woman in this particular job so we are going to draft this woman if we got to the point where we had to draft? How would you handle it? I can't see how you would handle it logically.

Mr. PIRIE. If women were registered, Mrs. Holt, we would have a very large pool of women whose location would be known, and who would be available to be called up, classified and examined in case induction or conscription were required by the national emergency. The armed services would have to determine the number of women that they could use both for purposes of expanding the forces and also for releasing men from the support functions to combat functions.

Dr. ROSTKER. Mrs. Holt I think it comes back again to the question of equity. There is no question that women who are physically unfit, as men who are physically unfit, would not be drafted. That is a well-established principle within selective service. There is no question that if there are sufficient male volunteers to meet the needs of the Department of Defense, men would not be drafted. And, if there were a sufficient number of women volunteers to meet the needs of the Department of Defense, women would not be drafted. What we are discussing here is the act of registration, the act of identifying oneself to Selective Service and keeping Selective Service informed of their whereabouts. This would enable us to conscript in a fair and equitable manner, consistent with the needs of the Department of Defense for the required numbers of people.

Mrs. HOLT. Do you think there is any military reason to register women?

Mr. PIRIE. Are you asking me, Mrs. Holt?

Mrs. HOLT. No; I am asking Dr. Rostker.

Dr. ROSTKER. I believe that the whole philosophy of the Selective Service System is one of establishing a fair procedure under law.

Mrs. HOLT. I am not talking about the equity now. I am talking about producing the best military we can produce, the most manageable military, for the least amount of money. It is going to cost more money to register women. It is going to create a bigger pool of people. We are getting all of the fine wonderful volunteer women, who are doing a great job. Do we need to do it for military reasons?

Dr. ROSTKER. I think it is consistent with the whole structure of our military.

Mrs. HOLT. Why can't you say yes or no?

Dr. ROSTKER. Yes.

Mrs. HOLT. If you think there is a military reason, what is it?

Dr. ROSTKER. I think that the military is a reflection of the rules of our society.

Mrs. HOLT. You are talking about equity. I am talking about military.

Dr. ROSTKER. I don't think you can separate them.

Mrs. HOLT. Suppose a man says, "I am not going to go to combat unless a woman goes." How are you going to handle that equity? It has got to be a matter of national policy. It has gotten into politics now. That is absolutely the only reason the President for some reason thinks it is going to make him more popular if we register women, and then says he is not going to put them into combat. I think it is ridiculous. It is not a tenable position, and it is going to cost money that we need to be using in other places. We might not even have to use registration if we could put the money into doing some of these other things we need to do.

This is a decision of the fourth circuit:

After acknowledging that females were performing vital services in the Armed Forces, nevertheless considering the demands of the military service, we cannot say that Congress had no rational basis for the distinction based on sex.

That is a 1975 decision. So I think, you know, they are on good sound constitutional grounds. I think you pointed out that if it is a classification for the national good, then it is constitutional.

Thank you, Mr. Chairman.

Mr. WHITE. Thank you, Mrs. Holt.

Mr. Nichols.

Mr. NICHOLS. I have one question, Mr. Chairman and Mr. Secretary. Last summer this committee, led by the chairman, made what we feel was a rather valiant effort on the House floor to pass the registration bill. We had absolutely no help from the administration on this, and in fact, the administration at that time, I believe, said that they didn't feel like it was necessary.

Now, what has happened in the ensuing months? Would you spell that out exactly why you felt it was not necessary back in July or August, and that it is necessary now for the defense of this country?

Mr. PRIE. First, I think the most significant reason, Mr. Nichols, is related to the Soviet invasion of Afghanistan. It is very clear to the administration that it is necessary for us to demonstrate that we cannot allow the Soviet Union to carry out such a brutal and aggressive act with impunity. It is necessary to demonstrate that we are willing to take actions which we previously did not wish to take in order to both demonstrate our resolve and to improve the readiness of the Armed Forces. I think that is a very major issue.

Further, as we have gone into the issue of the registration business, as we have been discussing here, it has become clear that there will always be a good deal of uncertainty about the operation of the contingency plan to register people. I think it was quite reasonable for us to wish to build that contingency plan, just like now it is reasonable for us to wish to turn that contingency plan, given the nature of the international situation, into a reality, into a pool of registered people.

Mr. NICHOLS. Let me ask the same question that Mrs. Holt put to the Director of Selective Service. Mr. Secretary, in your personal view do you feel there is a military need to register women?

Mr. PRIE. Yes, sir, we have women serving very effectively in military positions today. It is quite important to have a pool of applicants that is as large as possible for a variety of reasons including military effectiveness.

Mr. NICHOLS. Well, I happen to believe, Mr. Secretary, that women are just as patriotic as men. I cannot see the necessity for registering women at this time. I believe if we got into a conflict we would have women four deep at the registration booths wanting to serve the country on a volunteer basis.

Mr. PRIE. Yes. I hope we would have men in the same regard.

Mr. NICHOLS. I believe we would.

Thank you, Mr. Chairman.

Mr. WHITE. Thank you, Mr. Nichols.

Mr. Hillis.

Mr. HILLIS. Thank you, Mr. Chairman.

Mr. Secretary, you stated in your earlier testimony that there are approximately 150,000 women, I believe in active service today, and it was projected by 1985 that perhaps this number would go to 250,000; is that correct?

Mr. PIRIE. Yes; that is right.

Mr. HILLIS. And whether or not we have registration of these women, it is anticipated that that 100,000 gain will be made through enlistment of volunteers; is that correct?

Mr. PIRIE. Yes, sir, enlistment of volunteers and by keeping people in who we have now.

Mr. HILLIS. Retention and so on, but there will be an increase and that will be brought about through an appeal to the young women of America to enlist and serve their country; is that correct?

Mr. PIRIE. Yes, sir.

Mr. HILLIS. Now, has your office or someone in your area made a study of what the manpower and womanpower needs might be if we in the foreseeable future had to go to an even larger military force or toward mobilization in a national emergency?

You project a figure higher than 150,000. My colleague said the figure of 300,000 was used in World War II. What is your upward projection in case of a national emergency?

Mr. PIRIE. Mr. Hillis, we estimate that we would need 650,000 individuals to be inducted over the first 6 months.

Mr. HILLIS. How many of those would be women?

Mr. PIRIE. At least 80,000 of these individuals would be women, Mr. Hillis.

Mr. HILLIS. That is even if we had the 250,000, you are talking about another 80,000, which projects into about 330,000?

Mr. PIRIE. Yes, sir.

Mr. HILLIS. That would be a realistic figure for us to meet an emergency mobilization in this country: is that right? How many people are you talking about when you say register women?

Mr. PIRIE. There are roughly 2 million men and 2 million women in each year group. So that for the first 2-year groups, we are talking about 4 million men and 4 million women.

Mr. HILLIS. So you are going to register 4 million women to perhaps—hopefully we wouldn't want to have to draft anyone, but to meet our needs perhaps to raise womanpower needs of 80,000?

Mr. PIRIE. That is correct.

Mr. HILLIS. That is a very, very small fraction of a percentage; is it not? Don't you think 80,000 could be met by volunteers?

Mr. PIRIE. It would be pure speculation on my part, Mr. Hillis. As I said to Mr. Nichols, I hope that we would have both adequate men and women volunteers. However we can't be sure of that.

Mr. HILLIS. We are staying out of the social issues here. I regard equity as one of them perhaps defining this need. You talked about 95 percent of the jobs young women can do. I think this is very good.

I was at the airbase in my district the other day, and the first person I spotted overhauling an engine was a very attractive and very well trained, obviously, young person, who was a woman. In checking with the shop foreman he said she was one of the best mechanics he had in the shop.

The point I am getting at even with that 95 percent that only leaves 5 percent that are closed to women, and in those 5 percent combat MOS's—that is where really the great numbers of people are required in that 5 percent. Do you have those figures?

Mr. PIRIE. I can supply those figures for the record, but it is true to state that a very large number of the people in the Armed Forces are in the MOS's that are not suited to women.

[The following information was received for the record:]

Only the 5 percent of military occupational specialties classified as combat skills are closed to women. However, in terms of the total number of combat positions, or requirements, the percentage is considerably higher. The most recent Department of Defense formal survey of the exact number of combat versus noncombat jobs showed that the combat and direct combat support jobs constituted about 43% of all authorizations. Specifics for that computation are detailed on pages 15 through 17 of the Department's Background Study "Use of Women in the Military," second edition, dated September 1978.

Mr. HILLIS. Artillery personnel.

Mr. PIRIE. Exactly.

Mr. HILLIS. And this is where the great numbers are required.

Mr. PIRIE. Yes, in the combat skills.

Mr. HILLIS. So unless Congress changes the social policy as to that 5 percent, it is conceivable that the numbers that we are talking about here today, which was originally 100,000 and has gone to 250,000, and then has gone to 330,000, aren't going to change until we make the policy change on the 5 percent that are closed on the MOS's.

Mr. PIRIE. We are on the path toward a total strength of 250,000 women, in 1985 which is 13 percent of the Armed Forces. As we move toward this level we will be able to observe them and use them effectively, and whether 250,000 is the right number. We have to find that out. That is our plan for increasing the number of women in the Armed Forces.

Mr. WHITE. I want to emphasize one point. The question before the committee is whether or not to register women at this time. I emphasize those words as this does not preclude us at some time down the line when we think the need does arise to reinstate a registration for women. Mr. Simms, I would like to say this: Your burden of proof, as you say would be to show that it is not necessary to register women at this time and put it in the negative rather than to say whether it is necessary, to say it is not necessary. I point out these things to see whether or not you feel this would help to clarify your burden of argument that the evidence is very clear before this committee that registration now, standby registration now, of young males is to provide a reservoir to train for combat in the event of mobilization. The evidence is very clear from all official witnesses and almost all of the other witnesses—maybe there is one witness who has a different opinion—but otherwise, the overwhelming evidence was that there is no intention to put women in combat roles. Therefore I would say this would serve your burden of finding there is no need to register women at this time.

Mr. SIMMS. Let me address that by saying at first it is the opinion my office gave, and OMB indicates, we think the real linchpin of our country's defense is directly tied to the proposition that as a constitutional matter Congress may prohibit women from serving in combat. Everything relates back to that proposition.

Let me answer your question by contrasting the kind of approach that you are suggesting with the kind of approach that the administration is suggesting, and going back to the opinion that Mrs. Holt alluded to earlier, the case of *Owens v. Brown*. In that case Judge Sirica held unconstitutional assignment across the board for military duty. Judge Sirica held that unconstitutional. He said that that particular provision was unconstitutional because it was not directed at enhancing military preparedness because the sweep of the prohibition was purposely extended to cover both combat assignments and noncombat assignments.

Analytically speaking, purely as a lawyer, the burden on the Justice Department to defend an all-male registration which is on its face vulnerable to the same kind of attack and same kind of decision made by Judge Sirica in *Owens v. Brown* is very heavy. That is why I say that the burden on Congress and the burden of the Justice Department is over the years trying to convince the Court and Congress to show why women should not be registered. There has to be a link in our feeling to the combat situation.

The way the administration proposes to make that link is, register women, No. 1, and then, No. 2, based on current military assessment of their needs for men to fill combat situations, they will draft women accordingly. There is no doubt in my mind that that process would be held constitutional. That would be a contemporaneous decision based on military necessity, which I have no doubt could be defended.

Mr. WHITE. But in the negative though, if the Congress opts not to register women, then I think we would be on firmer ground with the court, especially in the light of the history of volunteering of women who have fulfilled the necessary roles.

Mr. SIMMS. Let me answer that very briefly, Mr. Chairman. The constitutional attack on the all-male draft is not coming from women. That seems to be a wide misconception. The constitutional attack on the draft is coming from men who simply don't want to serve. I assume that is their motivation. They are invoking their alleged constitutional right. That is, most of the men simply do not want to serve in the military.

You raised earlier the question of military necessity, and I don't mean to say this in an alarmist fashion, but if the Supreme Court were finally to strike down all-male registration, the result of that decision would not be met to order the registration of women. Rather, there would be a striking down of the statute, and perhaps invalidation of the entire registration of males program that had been in effect.

Now, I don't say that categorically. It is hard to tell how the court would deal with that issue. Certainly they will be uncomfortable with it. So it can be said from a purely legal standpoint that somewhere down the road, remembering that challenges to the selective service laws normally may only be brought by people who refuse to step forth, and that the odds of getting a decision in the three-judge court case are very slim because of the jurisdictional problems in the case. There is at least some uncertainty, the importance of which this committee clearly appreciates. I think that ought to be clearly understood.

Mr. WHITE. But the other precedents you have cited in your brief consistently hark back to Congress as being those who are the best

judges as to the national security needs. I think if there is uncertainty, I think it is well that the courts make the decision. It needs to be clarified. That is your job and you do it well.

Mr. SIMMS. Unfortunately, this particular litigation occurs in a context in which there are very well-established rules about who can bring a suit and who cannot bring a suit, and we live with that body of law the same way plaintiffs do.

Mr. WHITE. Tell me, maybe a law could be passed with wide-sweeping scope and implication that hasn't been tested in the courts. Even if we passed the registration of women, it would be tested in the court.

Mrs. HOLT. Will the gentleman yield? I think the big point is—and you pointed out so well—the courts have deferred to the military to defend this country. They are the ones that have to make the decision about it through us, through the decisions that we make, and I think that is where it turns. They feel that we can classify according to any of these things if it is for the common defense of this country. I think that is where the whole issue turns. We haven't had one military person—I haven't heard one service chief or anybody say that there was any military need to register women. This is a civilian deal. It is not really the military feeling at all.

Mr. SIMMS. One factor which we did discuss in the last part of our opinion, Mrs. Holt, is the fact that ever since this three-judge court case was filed in 1970, the evolution of the Supreme Court's interpretation of the equal protection clause as applied to sex discrimination has been sort of—extraordinary would be a good word for it. It has come a long way, and the Justice Department—although we will make every conceivable effort to defend the constitutionality of the existing law, as I stated earlier, we can use all of the help we can get, and let me reemphasize the fact that the courts have shown a great deal of deference to Congress—takes no responsibility whatsoever off of your shoulders and the administration's shoulders now to address these issues very squarely and resolve them as they should be resolved.

Mr. WHITE. I think we have made a pretty good record for you, and if you are looking for backup information or evidence, I think it is there throughout this hearing. Don't you feel so, Mrs. Holt?

Mrs. HOLT. Yes.

Mr. WHITE. Are there any other questions?

Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

Addressing Mr. Simms again, isn't there a sharp distinction in the sex discrimination cases in the private sector and alleged sex discrimination cases in the military? We have section 8 of the Constitution facing us squarely, and it is the prerogative of some sitting judge to supersede the Congress in its compelling role in providing for the national security. It seems to me that there is a substantial body of law on the books un rebutted which supports that proposition.

Mr. SIMMS. Let me respond to that by saying first I commend to you Judge Sirica's opinion.

Mr. HOGAN. I have read it, Mr. Simms, and I am wondering if it is some sitting judge's prerogative to supersede the opinion of Congress.

Mr. SIMMS. Well, it always is in constitutional matters because the courts finally decide what the Constitution means.

Let me also say this sharp distinction you are talking about is not quite as sharp as I wish it were from the standpoint of somebody trying to defend the Selective Service Act of 1949. Indeed, the language that we rely on most heavily in our opinion from *Schlesinger v. Ballard* is clearly dictum in that case, and no opinion issued by the Supreme Court since *Schlesinger* has suggested that it ought to be read as a decision based upon deferring to military needs.

So, while we are prepared to make that argument, I am not nearly as confident as you may be and I don't think the sharp distinction you are talking about has been drawn in any court cases of which I am aware.

Mr. HOGAN. Thank you.

Mr. WINCUP. I have two areas I would like to ask about. I am interested in your 80,000 figure. The testimony has been offered to this committee in a number of hearings that your requirements are for 100,000 in 60 days and 650,000 in 180 days. Those numbers are not based on how many people we need; they are based on how many people we can train during that period, essentially the size of the training bases.

Mr. PIRIE. The initial constraints relate to the time required to expand the training bases. Other considerations include the activation of the production base, the availability of weapons, and things of that kind.

Mr. WINCUP. But the training base is a limiting factor insofar as the requirements are concerned?

Mr. PIRIE. That is one of the considerations that was taken account of in the formulation of the need for the 100,000 individuals by M plus 60. That assumes that the training base and the selective service team all start from the same point at M day. It is quite conceivable to me in a period of rising tension, the President would start the training some months ahead of time, in which case the problem would not then exist.

Mr. WINCUP. The point is, I guess the shortage that exists in the military in the early period generally over the 6-month period is in the combat area. That is where the bulk of your problem is. I assume the 80,000 you come up with are essentially the noncombat kinds of positions that you would be requiring during that period?

Mr. PIRIE. Yes; that is right.

Mr. WINCUP. Then is it the Department's position, based on your testimony, that if women are asked to register, that you would in fact draft women to cover all noncombat positions during the course of that period?

Mr. PIRIE. No; that is not the case.

Mr. WINCUP. Why do you choose them over men for these certain positions?

Mr. PIRIE. I think that goes back to my two previous arguments.

Mr. WINCUP. It hardly sounds equitable.

Mr. PIRIE. That is correct, we would choose them for positions that the Armed Forces could effectively use them for, as I said before.

Second, as I also said before, it is reasonable to plan to use women who are trained and have skills that would be immediately available and very useful, such as medical skills, releasing men who would be immediately deployable.

The problem with the drafted man is that it takes 12 weeks of training to make that man deployable. However, many women who would

be drafted would require little, if any, training to move into a state-side noncombat job to release a man who had previous combat training and who was immediately deployable.

Mr. WINCUP. For this purpose you are saying to release another. That could be a man or a woman.

Mr. PIRIE. It could be a man or woman. As I pointed out on some of these things it might take time to train a man whereas if you had a woman already trained in that noncombat skill that would be a plus.

Mr. WINCUP. Let me ask, if I might, Mr. Simms, the point about the Government's burden in the cases that you are addressing. You have said that the argument is the combat restriction in the statute. If Congress were to take action to permit the registration of women, with the combat exclusions in their current form only applying to Navy and Air Force, and none for the Army and in a sense for the Marine Corps—and they are not as clear as they might be in terms of introduction of women in combat—if the registration of women were permitted, would it make your burden more difficult?

Mr. SIMMS. If the registration of women were permitted there presumably wouldn't be any lawsuit until such time as a male challenged his being sent into combat, and we have no doubt that that can be defended, not just the statute that you are talking about but the policy which supplements the statute for the two services not literally covered by the statute.

We have no doubt about our ability to defend the proposition that women shall not serve in combat, but the problem is to connect the two notions. That is what you ought to be focusing on: How do you relate your decision not to register women to the fact that you will not use them in combat if you want to put it that way? I will put it in the negative, to this proposition that women can in fact be precluded from being assigned to combat.

Mr. WINCUP. And it is your opinion that the fact that the latest expression of Congress on the subject was to not permit women to be registered would have no effect on that?

Mr. SIMMS. None whatsoever.

Mr. MONTGOMERY. Mr. Chairman.

Mr. WHITE. Mr. Montgomery.

Mr. MONTGOMERY. Mr. Simms, in the past have the courts considered in their decision really what the Nation needs and the military needs in the survival of the Nation? In that opinion of the courts, do they consider that when ruling on the constitutional law?

Mr. SIMMS. Certainly that kind of notion of the survival of the Nation is a concept that I think is subsumed within the courts generally in deference to decisions made by Congress in the area of military affairs, the same way as when the President asserts his Commander in Chief powers, the courts tend to show a great deal of deference. The courts simply try not to meddle in military affairs when they can possibly avoid it.

Mr. MONTGOMERY. Thank you.

Mr. WHITE. Not to prolong your presence here, but, Dr. Rostker, I understand you had tightened up the procedures that are contemplated for registration, and with your permission I would like to have you announce these for the record. Your new regulations will

require face-to-face registration, of course, at a post office. The individual will come in and sign his name and will provide an identifying number, whether it is social security or whatever form of identifying number that he has in the absence of a social security number; is that correct?

Dr. ROSTKER. That is correct.

Mr. WHITE. Is there anything further at this time that is contemplated to identify that person?

Dr. ROSTKER. We will control the distribution of the registration material, and we will require that the individual provide us with his social security number and other positive identification.

Mr. WHITE. Or if he has no social security number, some other identifying number.

Dr. ROSTKER. The registration forms are designed today with a checkoff box to indicate that positive identification was received by the postal clerk. The postal clerk will examine the material, and check it for correctness and legibility. Next, through the procedures established, the forms will be forwarded to Selective Service.

Mr. WHITE. We appreciate your coming today, and there being no further questions, we thank you very much for your appearance.

Mr. PIRIE. Thank you, Mr. Chairman.

Mr. WHITE. Our next witnesses are Mr. David Landau and Ms. Diana Steele, from the American Civil Liberties Union.

Mr. Landau, I note that you have a rather lengthy statement, and we are trying to confine the witnesses as best we can to shorten their time so that we can get all of the witnesses in. Would you like to have this placed in the record and summarize it?

Mr. LANDAU. Yes; please.

Mr. WHITE. The entire statement of Mr. Landau and Ms. Steele will be placed in the record.

STATEMENT OF DAVID E. LANDAU, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. LANDAU. Mr. Chairman, the American Civil Liberties Union appreciates the opportunity to appear here today, as we have over the past years, on the subject of selective service reform, and particularly the registration of women. We will briefly summarize our statements and be happy to answer any questions.

A few weeks ago, the President submitted to Congress recommendations for selective service reform. The two principal recommendations were a proposed additional \$21 million appropriation for 1980 to reactivate the Selective Service System including draft registration and a request that the Military Selective Service Act be amended to include women. Before we comment on the recommendation to include women in the MSSA we have a few introductory remarks on the general issue of selective service reform.

Last September, the House of Representatives overwhelmingly rejected draft registration by a 2 to 1 margin. At that time, the administration was adamantly opposed to registration.

The new Director of the Selective Service, Bernard Rostker, prepared a draft report and recommendations for the President pursuant

to the congressional mandate to President Carter to make recommendations on selective service reform. This draft report, which was not released until 10 days ago, strongly recommended against peacetime registration. Instead, Mr. Rostker developed an efficient and highly credible plan for meeting DOD's emergency requirements without pre-mobilization registration. He stated that peacetime registration would be "redundant and unnecessary."

The President rejected this plan and ordered the report be redrafted so that it would recommend peacetime registration. The President then suppressed the original draft and attempted to generate the illusion that the Selective Service System was in such a dire state of disarray that peacetime registration was the only route to improve our readiness to meet and deter perceived threats from abroad. In his February 9 report to Congress the President not only does not discuss why Mr. Rostker's recommendation was rejected, but fails to list it as an option. This use of the draft and its system to effectuate ostensible foreign policy goals is dangerous and misleading.

The Rostker plan would not only meet but exceed DOD emergency mobilization requirements. His plan would deliver the first inductees on the 17th day—13 days ahead of the DOD schedule—100,000 on the 33d day—27 days ahead of schedule—and 650,000 inductees within 124 days or nearly 2 months ahead of schedule, and all of this without peacetime draft registration. Mr. Rostker this morning claims that this timetable has been set back a bit, but he also stated that he still could meet DOD's emergency requirements.

We believe that Mr. Rostker's is a highly efficient approach to emergency mobilization, and we would like to stress that these emergency requirements, which are the basis of all selective service reform, have not changed since the crisis in Southwest Asia. These DOD emergency requirements are the most stringent possible. All of these facts to us point to one conclusion, that draft registration is not necessary. President Carter has made an inappropriate use of the draft and its system as an instrument of foreign policy. But the draft and its system cannot be brandished about like the Olympic boycott or a grain embargo. There must be more of a justification than demonstrating our resolve to the world. The moral and social implications of the draft are simply too great to permit any less than a conclusive showing that such a system is required today.

The President's move to reinstitute draft registration will have a harsh impact on the young people of this country. Citizens who already fear a Big Brother government will be further alienated by this massive surveillance system. By 1985, all young people ages 18-26 will be under a legal obligation to notify the Government of their whereabouts at all times. Those who fail to do so will be subject to up to 5 years in jail and \$10,000 fines.

The ACLU strongly objects to the use of wartime national security measures during peacetime. For this Nation, a system of conscription has always been a last resort when our security is immensely threatened. We believe a peacetime draft and its system is totally incompatible with the principles of individual liberty upon which this Nation was founded.

We, therefore, urge Congress to reject draft legislation for men and women. I would like to stress this point. We are opposed to draft registration for everyone. However, should Congress choose to fund draft legislation, the laws under which this will be conducted must conform to the Constitution. Draft registration must be implemented fairly and must not discriminate against any one person or group of persons based on factors which are constitutionally unsound. This includes gender discrimination.

I would like now to turn to Diana Steele, who will discuss the constitutionality of a males-only draft registration.

WRITTEN STATEMENT OF DAVID E. LANDAU AND DIANA STEELE

INTRODUCTION

We appreciate this opportunity to appear before the Subcommittee. The American Civil Liberties Union is a nationwide organization of over 200,000 members dedicated to the preservation and enhancement of the Bill of Rights. Throughout its history, the Union has played an active role in the debate over the Selective Service System. Indeed, the ACLU traces its origin to the National Civil Liberties Bureau which was founded in 1916 to assist conscientious objectors during World War I. Since that time it has consistently opposed the inequities of the Selective Service System in judicial, legislative and other public forums and today continues to oppose peacetime military conscription and an active Selective Service System as a severe infringement on individual liberties.

A few weeks ago, the President submitted to Congress recommendations for Selective Service reform. The two principal recommendations were a proposed additional \$21 million appropriation for 1980 to reactivate the Selective Service System including draft registration and a request that the Military Selective Service Act (MSSA) be amended to include women. Before we comment on the recommendation to include women in the MSSA we have a few introductory remarks on the general issue of Selective Service reform.

Last September, the House of Representatives overwhelmingly rejected draft registration by a 2-1 margin. At that time, the Administration was adamantly opposed to registration. On June 8, 1979 Secretary of Defense Harold Brown said in a letter to Senator William Cohen:

"Our view and the view suggested in all studies on the question that I have seen, is that the critical step towards achieving our goals is not immediate collection of names through registration, but rather the immediate improvement of our ability to prepare for processing people, and in case of mobilization actually to process them, through the Selective Service System."

The new Director of the Selective Service, Bernard Rostker prepared a draft report and recommendations for the President pursuant to the congressional mandate to President Carter to make recommenda-

tions on Selective Service reform. This draft report, which was not released until ten days ago, strongly recommended against peacetime registration. Instead, Mr. Rostker developed an efficient and highly credible plan for meeting DOD's emergency requirements without pre-mobilization registration. He stated that peacetime registration would be "redundnat and unnecessary."

The President, without any basis in fact, rejected this plan and ordered the report redrafted so that it would recommend peacetime registration. The President then suppressed the original draft and attempted to generate the illusion that the Selective Service System was in such a dire state of disarray that peacetime registration was the only route to improve our readiness to meet and deter perceived threats from abroad. In his February 9 report to Congress the President not only does not discuss why Mr. Rostker's recommendation was rejected, but fails to list it as an option. This use of the draft and its system to effectuate ostensible foreign policy goals is dangerous and misleading.

The Rostker plan would not only meet but exceed DOD emergency mobilization requirements. His plan would deliver the first inductees on the 17th day--thirteen days ahead of the DOD schedule--100,000 on the 33rd day--twenty-seven days ahead of schedule--and 650,000 inductees within 124 days or nearly two months ahead of schedule, and all of this without peacetime draft registration. The President's plan saves a mere seven days over the Rostker plan.

Mr. Rostker's plan is a carefully constructed, well-structured and highly efficient approach to emergency mobilization. It even provides for safeguards for unanticipated breakdowns in the system.

It must be stressed that DOD's emergency requirements, the basis of all Selective Service reform have not changed since the crisis in Southwest Asia. And even if DOD were to increase its needs in the near future, Mr. Rostker's plan would still easily meet those upgraded requiriements.

All of these facts point to one conclusion: draft registration is not necessary. President Carter has made an inappropriate use of the draft and its system as an instrument of foreign policy. But the draft and its system cannot be brandished about like the

Olympic boycott or a grain embargo. There must be more of a justification than demonstrating our resolve to the world. The moral and social implications of the draft are simply too great to permit any less than a conclusive showing that such a system is required today.

The President's move to reinstitute draft registration will have a harsh impact on the young people of this country. Citizens, who already fear a Big Brother government, will be further alienated by this massive surveillance system. By 1985, all young people ages 18-26 will be under a legal obligation to notify the government of their whereabouts at all times. Those who fail to do so will be subject to up to five years in jail and \$10,000 fines.

The Rostker report predicts compliance to be within 90%. But, if just ten percent of 19-20 year olds do not comply, that means 400,000 potential draft felons. Does the Administration seriously intend to investigate, prosecute, and fill our jails with that many young people? And how will this be done--through the FBI, through the cross-checking of IRS and Social Security data, or through the combing of high school yearbooks, college entrance lists and drivers' licences? Is this the price we must pay for the foreign and domestic policy failures of the President?

The ACLU strongly objects to the use of wartime national security measures during peacetime. For this nation, a system of conscription has always been a last resort when our security is imminently threatened. It must rest upon what James Madison called "the impulse of self-preservation." A peacetime draft and its system is totally incompatible with the principles of individual liberty upon which this nation was founded.

We urge Congress to reject draft registration for men and women. Should Congress choose to fund draft registration, however, laws under which this will be conducted must conform to the Constitution. Draft registration must be implemented fairly and must not discriminate against any one person or group of persons based on factors which are constitutionally unsound. This includes gender-discrimination.

Constitutionality of a Males-Only Draft Registration

The elimination of gender-discrimination in the military has been of particular concern to the ACLU Women's Rights Project. We filed Owens v. Brown, 455 F. Supp. 291 (D.C.C. 1978), which resulted in Judge Sirica holding the statutory prohibition against women serving on board naval ships unconstitutional. We filed Beatty v. Brown, Civil Action No. 79-0512 (D.D.C.), challenging the Army's disparate education requirements for enlistment for men and women, during which the Army equalized the requirements. Should Congress reinstitute a draft registration requirement that was applicable only to men, we intend to file suit challenging it also. I hope to convey to you today the legal and factual basis for my conviction that such a suit would result in the registration legislation being invalidated as contrary to the equal protection component of the fifth amendment.

Preliminarily, I would like to emphasize that it is current fifth amendment doctrine that establishes the constitutional infirmity of a males-only draft registration requirement. The belief that women will be protected from registration or induction until the equal rights amendment is ratified is based on misconception of the current state of the law.

The exemption of women from prior draft registration requirements was seldom questioned. Where it was challenged on constitutional grounds, it was upheld with little analysis. However, today, as a result of two major developments since the end of the last draft, the outcome of a constitutional analysis of a draft registration limited to men will differ. First, in 1976, the Supreme Court established a heightened review standard for sex-based classifications against which such a statute would be measured. Second, the influx of women into the military during the 1970's provided substantial evidence that women are capable of high quality performance in most, if not all, military skills. This evidence unequivocally demonstrates that a males-only draft registration requirement would not meet the heightened review standard.

During the late 1960's and early 1970's, the courts that upheld compulsory military service for men alone applied what is

called the "rational basis" model for equal protection review. That is, if the classification is rationally related to a legitimate governmental objective, it will survive judicial scrutiny. This model contrasts with that employed for classifications which either infringe on fundamental rights or are denominated suspect. Such classifications must be based upon compelling governmental objections and be necessary to their accomplishment. Historically, gender classifications were analyzed under the rational basis model and were virtually ensured of passing constitutional muster.

The turning point came in 1976. That year in Craig v. Boren, the Supreme Court articulated for the first time a heightened standard of review for sex-based classifications. It established that such classifications will fail unless the legislative objective to be served is important and the classification is closely and substantially related to the objective. Since Craig, the Court has repeatedly reaffirmed that gender-based legislative classifications must be tested by this new, stringent standard and has held many such classifications unconstitutional.

Significantly, the cases cited by the Department of Justice as support for its position that the Supreme Court would apply the equal protection guarantee to military matters with special circumspection were decided in 1971 and 1975, before the enunciation of this new, heightened review standard. And there has been no indication of judicial retreat from that standard in military cases.

In addition to establishing an elevated review standard for sex-based classifications, the Supreme Court has also made clear since the last draft that in scrutinizing such classifications it will be guided by two basic principles. First, gender classifications based on stereotypical notions about women will not be tolerated as a proxy for some other individual characteristic. Second, gender classifications which appear to favor women will not be protected from scrutiny.

Application of the legal principles I have outlined to compulsory draft registration limited to men demonstrates the constitutional infirmity of such a classification. Initially, it is clear

that deference to congressional judgment in military matters will not preclude meaningful judicial review. Courts, including the Supreme Court, have repeatedly decided the reach of the equal protection guarantee of the fifth amendment in cases brought by women challenging gender discrimination by the military. And, although there is judicial support for the proposition that involuntary conscription may be necessary to satisfy a vital governmental objective in maintaining the national security, it does not follow that the imposition of this obligation on men alone is "closely and substantially" related to the accomplishment of that objective.

It bears emphasis that, contrary to the assumption in the memorandum by the Department of Justice, arguing in favor of the constitutionality of a males-only registration requirement, the heated debate over whether women should be assigned to combat units is not central to determining whether a males-only draft registration requirement furthers the objective of maintaining the national security with a combat-ready military. Congress has already recognized this in an analogous context. In 1975 it enacted legislation permitting women's entrance into the military academies in spite of the Pentagon's principle objection that the academy issue and the combat question were inseparable. Congress nonetheless resoundingly passed the amendment to permit women's entrance without legislating on the inflammatory combat issue.

The perception reflected in the 1975 Congressional judgment that the two issues are separate is altogether accurate. The percentage of individuals eligible for the draft who actually end up in combat positions is so small that whether or not women should be assigned to them is largely irrelevant to determining whether or not they should be excluded from a draft registration. In the last draft, less than 1% of those eligible were inducted and subsequently assigned to a combat unit. If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit -- whether or not there was a female combat exclusion -- would be negligible. Even in the basic Army infantry division nearly two-thirds of the troops serve in a support capacity.

Applying the military's own broader exclusionary classifi-

cations, many positions are "sex-interchangeable". The Army estimates 286,000 out of 567,000 jobs can be filled by either sex. The Air Force calculates 94% of enlisted jobs are interchangeable. While I do not yet have up-to-date figures, the number of Navy jobs open to women should have increased dramatically since judicial invalidation of the statute precluding them from serving on ships.

The Brookings Institution's study on Women and the Military further confirms the irrelevance of the combat exclusion to the registration issue. The authors estimated that the Navy could increase its goal for utilizing women five-fold while still prohibiting them from combat vessels. It concluded that fifty percent of all Army enlisted positions could be filled by women without eliminating the prohibition of women from combat specialties and without disrupting male assignment and career development patterns.

The absence of a substantial relationship between exclusion of women from a draft registration requirement and national security is underscored by changes in military policy which reflect the military's recognition that women's enlistment actually furthers its goal of fielding an effective force. In 1972, the decision was made to increase the proportion of women in the military. At that time, women constituted only 1.9% of all military personnel. That percentage grew to nearly 6% in fiscal year 1977 and is programmed to reach 12% by fiscal year 1984.

The vast majority of occupational specialties have recently been opened to women in all branches of the military. Only 22 of a total of 345 military occupational specialties in the Army remain closed to women. Only 4 of the 230 specialties in the Air Force are closed to women and one of those is being tested to see if women can satisfactorily perform all aspects of the specialty. In the Navy, only 16 of 99 ratings are closed to women and this is expected to drop to eleven. In the Marines, women are excluded from only 4 of the 38 occupational fields.

That women's exclusion from a draft registration requirement does not substantially further present-day military purposes

finds further support in recent studies of the impact of women on military effectiveness. One study, conducted by the Army Research Institute in October 1977, concluded that unit performance in an intensive 72 hour exercise was not impaired by female content of up to 35%, the maximum percent tested. Another, a May 1978 test, reveals that in a several weeks extended exercise, which included 3 weeks in field conditions, up to 10% women, again the maximum percent tested, did not hinder unit performance. In 1972, the Navy's experimental assignment of females to the U.S.S. Sanctuary revealed that women perform at "every ship board function with equal ease, expertise and dedication as men do". As I have mentioned, in 1978, based on the Sanctuary experiment and impressive additional documentation, the statutory prohibition against women serving on board naval ships was held unconstitutional under the equal protection component of the fifth amendment.

In the face of the above experience and data, the conclusion of the Department of Defense that "women are demonstrating that they are capable of playing an even larger part in the national defense" was unavoidable. Although the outer parameters of women's participation may be unclear, their ability to perform a substantial role in the military was well documented and widely recognized during the 1970's.

Once the combat issue is put in proper perspective and the evidence of women's recognized ability to perform military functions is assessed, it becomes apparent that an exclusion of women from a draft registration requirement would be the product of the archaic notion that women must remain "as the center of home and family". One court apparently recognized as much about the Congress which enacted the prior draft law. In upholding that law's exclusion of women, the court stated:

In providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning.*

* United States v. St. Clair, 291 F.Supp. 122 (S.D.N.Y. 1968).

At one time such romantically paternalistic underpinnings of sex-based classifications were routinely accepted by the judiciary. Under current equal protection doctrine they are intolerable precisely because they operate to "reinforc[e] the stereotypes about the 'proper place' of women and their need for special protection".** Overbroad generalizations concerning one sex or the other no longer can be used to substitute for a functional, gender-neutral means of distinguishing between the physically unfit and the able-bodied. The paternalistic attitude inherent in exclusion of women from past draft registration requirements not only relieved women of the burden of military service, it also deprived them of equal stature with men. Until women and men share both the rights and the responsibilities of citizenship, they will not be equal.

In sum, when the evidence of women's participation in the military since the last draft is measured against the new, heightened review standard for sex-based classifications, it is clear that their exclusion from a draft registration requirement will not adequately relate to the maintenance of the national security. Consequently, should Congress reinstitute a draft registration requirement, using sex as a proxy for an individual's capacity to discharge military duty, there can be no doubt that litigation will be brought and that the legislation will almost certainly be invalidated as violative of the equal protection component of the fifth amendment.

Thank you for the opportunity to deliver this statement.

** Orr v. Orr, 440 U.S. 268 (1979).

STATEMENT OF MS. DIANA STEELE, WOMEN'S RIGHTS PROJECT,
AMERICAN CIVIL LIBERTIES UNION

Ms. STEELE. I would like to point out that my testimony will simply summarize a memorandum of law which is attached as an appendix to the testimony itself.

The elimination of gender discrimination in the military has been of particular concern to the ACLU Women's Rights Project. We filed *Owens v. Brown* which resulted in Judge Sirica holding the statutory prohibition against women serving on board naval ships unconstitutional. We filed *Beatty v. Brown*, Civil Action No. 79-0512, D.D.C., challenging the Army's disparate education requirements for enlistment for men and women, during which the Army equalized the requirements. Should Congress reinstitute a draft registration requirement that was applicable only to men, we intend to file suit challenging it also. I hope to convey to you today the legal and factual basis for my conviction that such a suit would result in the registration legislation being invalidated as contrary to the equal protection component of the fifth amendment.

Preliminarily, I would like to emphasize that it is current fifth amendment doctrine that establishes the constitutional infirmity of a males-only draft registration requirement. The belief that women will be protected from registration or induction until the Equal Rights Amendment is ratified is based on misconception of the current state of the law.

The exemption of women from prior draft registration requirements was seldom questioned. Where it was challenged on constitutional grounds, it was upheld with little analysis. However, today, as a result of two major developments since the end of the last draft, the outcome of a constitutional analysis of a draft registration limited to men will differ. First, in 1976, the Supreme Court established a heightened review standard for sex-based classifications against which such a statute would be measured. Second, the influx of women into the military during the 1970's provided substantial evidence that women are capable of high quality performance in most, if not all, military skills. This evidence unequivocally demonstrates that a males-only draft registration requirement would not meet the heightened review standard.

During the late 1960's and early 1970's, the courts that upheld compulsory military service for men alone applied what is called the rational basis model for equal protection review. That is, if the classification is rationally related to a legitimate governmental objective, it will survive judicial scrutiny. This model contrasts with that employed for classifications which either infringe on fundamental rights or are denominated suspect. Such classifications must be based upon compelling governmental objections and be necessary to their accomplishment. Historically, gender classifications were analyzed under the rational basis model and were virtually insured of passing constitutional muster.

The turning point came in 1976. That year in *Craig v. Boren*, the Supreme Court articulated for the first time a heightened standard of review for sex-based classifications. It established that such classifications will fail unless the legislative objective to be served is important

and the classification is closely and substantially related to the objective. Since *Craig*, the Court has repeatedly reaffirmed that gender-based legislative classifications must be tested by this new, stringent standard and has held many such classifications unconstitutional.

Significantly, the cases cited by the Department of Justice as support for its position that the Supreme Court would apply the equal protection guarantee to military matters with special circumspection were decided in 1971 and 1975, before the enunciation of this new, heightened review standard. And there has been no indication of judicial retreat from that standard in military cases.

In addition to establishing an elevated review standard for sex-based classifications, the Supreme Court has also made clear since the last draft that in scrutinizing such classifications it will be guided by two basic principles. First, gender classifications based on stereotypical notions about women will not be tolerated as a proxy for some other individual characteristic. Second, gender classifications which appear to favor women will not be protected from scrutiny.

Application of the legal principles I have outlined to compulsory draft registration limited to men demonstrates the constitutional infirmity of such a classification. Initially, it is clear that deference to congressional judgment in military matters will not preclude meaningful judicial review. Courts, including the Supreme Court, have repeatedly decided the reach of the equal protection guarantee of the fifth amendment in cases brought by women challenging gender discrimination by the military. And, although there is judicial support for the proposition that involuntary conscription may be necessary to satisfy a vital governmental objective in maintaining the national security, it does not follow that the imposition of this obligation on men alone is "closely and substantially" related to the accomplishment of that objective.

It bears emphasis that, contrary to the assumption in the memorandum by the Department of Justice arguing in favor of the constitutionality of a males-only registration requirement, the heated debate over whether women should be assigned to combat units is not central to determining whether a males-only draft registration requirement furthers the objective of maintaining the national security with a combat-ready military. Congress has already recognized this in an analogous context. In 1975 it enacted legislation permitting women's entrance into the military academies in spite of the Pentagon's principal objection that the academy issue and the combat question were inseparable. Congress nevertheless resoundingly passed the amendment to permit women's entrance without legislating on the inflammatory combat issue.

The perception reflected in the 1975 congressional judgment that the two issues are separate is altogether accurate. The percentage of individuals eligible for the draft who actually end up in combat positions is so small that whether or not women should be assigned to them is largely irrelevant to determining whether or not they should be excluded from a draft registration. In the last draft, less than 1 percent of those eligible were inducted and subsequently assigned to a combat unit. If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit—whether

or not there was a female combat exclusion—would be negligible. Even in the basic Army infantry division nearly two-thirds of the troops serve in a support capacity.

Applying the military's own broader exclusionary classifications, many positions are "sex interchangeable." The Army estimates 286,000 out of 567,000 jobs can be filled by either sex. The Air Force calculates 94 percent of enlisted jobs are interchangeable. While I do not yet have up-to-date figures, the number of Navy jobs open to women should have increased dramatically since judicial invalidation of the statute precluding them from serving on ships.

The Brookings Institution's study on women and the military further confirms the irrelevance of the combat exclusion to the registration issue. The authors estimated that the Navy could increase its goal for utilizing women fivefold while still prohibiting them from combat vessels. It concluded that 50 percent of all Army enlisted positions could be filled by women without eliminating the prohibition of women from combat specialties and without disrupting male assignment and career development patterns.

The absence of a substantial relationship between exclusion of women from a draft registration requirement and national security is underscored by changes in military policy which reflect the military's recognition that women's enlistment actually furthers its goal of fielding an effective force. In 1972, the decision was made to increase the proportion of women in the military. At that time, women constituted only 1.9 percent of all military personnel. That percentage grew to nearly 6 percent in fiscal year 1977 and is programed to reach 12 percent by fiscal year 1984.

The vast majority of occupational specialties have recently been opened to women in all branches of the military. Only 22 of a total of 345 military occupational specialties in the Army remain closed to women. Only 4 of the 230 specialties in the Air Force are closed to women and one of those is being tested to see if women can satisfactorily perform all aspects of the specialty. In the Navy, only 16 of 99 ratings are closed to women and this is expected to drop to 11. In the Marines, women are excluded from only 4 of the 38 occupational fields.

That women's exclusion from a draft registration requirement does not substantially further present-day military purposes finds further support in recent studies of the impact of women on military effectiveness.

Mr. WHITE. Pardon me. Would you be able to run over some of your testimony because we are trying to confine the witnesses to 10 minutes? We have got so many witnesses, and the illustrations are in the record.

Ms. STEELE. Yes, sir, I will be happy to.

I will quickly make the point that every test has come up with the result that women don't have any effect on military effectiveness up to the maximum percent that they have been tested. I think in the face of the above experience and data, the conclusion of the Department of Defense that "women are demonstrating that they are capable of playing an even larger part in the national defense" was unavoidable. I think that once the combat issue is put in proper per-

spective and the evidence of women's recognized ability to perform military functions is assessed, it becomes apparent that an exclusion of women from a draft registration requirement would be the product of the archaic notion that women must remain "as the center of home and family." One court apparently recognized as much about the Congress which enacted the prior draft law. In upholding that law's exclusion of women, the court stated:

In providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning.

At one time such romantically paternalistic underpinnings of sex-based classifications were routinely accepted by the judiciary. Under current equal-protection doctrine they are intolerable precisely because they operate to "reinforce the stereotypes about the 'proper place' of women and their need for special protection." Overbroad generalizations concerning one sex or the other no longer can be used to substitute for a functional, gender-neutral means of distinguishing between the physically unfit and the able-bodied. The paternalistic attitude inherent in exclusion of women from past draft registration requirements not only relieved women of the burden of military service, it also deprived them of equal stature with men. Until women and men share both the rights and the responsibilities of citizenship, they will not be equal.

In sum, when the evidence of women's participation in the military since the last draft is measured against the new heightened review standard for sex-based classifications, it is clear that their exclusion from a draft registration requirement will not adequately relate to the maintenance of the national security. Consequently, should Congress reinstitute a draft registration requirement, using sex as a proxy for an individual's capacity to discharge military duty, there can be no doubt that litigation will be brought and that the legislation will almost certainly be invalidated as violative of the equal protection component of the fifth amendment.

Thank you for the opportunity to deliver this statement.

MALES-ONLY DRAFT REGISTRATION REQUIREMENT:
AN EQUAL PROTECTION ANALYSIS

In June 1973, with the expiration of statutory authority for the draft, a nearly continuous period of over thirty years of compulsory military service for men came to an end. During that time, exclusion of women was seldom questioned. Where it was challenged on constitutional grounds, it was upheld with little analysis.

Today, however, as a result of two major developments since the end of the draft, the outcome of a constitutional analysis of a draft registration limited to men would differ. First, in 1976 the Supreme Court established a heightened review standard for sex-based classification against which such a statute would be measured. Second, the influx of women into the military during this decade has provided substantial evidence that women are capable of high quality performance in most, if not all, military skills. This evidence unequivocally demonstrates that a male-only draft registration requirement would not meet the heightened review standard. Consequently, should Congress enact such a requirement, it almost certainly would be invalidated by the Supreme Court as violative of the equal protection component of the Fifth Amendment.

Virtually all courts which have upheld compulsory military service for men alone have applied the "rational basis" model for equal protection review. ^{1/} That is, if a classification is

1/ In the following cases, equal protection challenges to the Selective Service System were upheld following application of the rational basis test: United States v. Reiser, 532 F.2d 673 (9th Cir.), cert. denied, 429 U.S. 838 (1976); United States v. Baechler, 509 F.2d 13 (4th Cir. 1974), cert. denied, 421 U.S. 993 (1975); United States v. Camara, 451 F.2d 1122 (1st Cir. 1971), cert. denied, 405 U.S. 1074 (1972); United States v. Fallon, 407 F.2d 621 (7th Cir.), cert. denied, 395 U.S. 908 (1969); Kovach v. Middendorf, 424 F. Supp. 72 (D. Del. 1976); United States v. Yingling, 368 F. Supp. 379 (W.D. Pa. 1973); United States v. Cook, 311 F. Supp. 618 (W.D. Pa. 1970); United States v. Clinton, 310 F. Supp. 333 (E.D. La., 1970); Suskin v. Nixon, 304 F. Supp. 71 (N.D. Ill. 1969); United States v. St. Clair, 291 F. Supp. 122 (S.D.N.Y. 1968). In United States v. Dorris, 319 F. Supp. 1306, 1308 (W.D. Pa. 1970), the standard applied by the court was not

(Continued)

rationaly related to a legitimate governmental objective, it will survive judicial scrutiny. This model contrasts with that employed for classifications which either infringe on fundamental rights or are denominated suspect. ^{2/} Such classifications must be based upon compelling governmental objections and be necessary to their accomplishment. ^{3/} Historically, sex was analyzed under the rational basis model.

The turning point came in 1976. That year in Craig v. Boren, 429 U.S. 190 (1976), the Supreme Court articulated for the first time a heightened standard of review for sex-based classifications. It established that such classifications will fail unless the legislative objective to be served is important and the classification is closely and substantially related to the objective. Since Craig, the Court has repeatedly reaffirmed that gender-based legislative classifications must be tested by this new, stringent standard. Orr v. Orr, 47 U.S.L.W. 4224 (1979); Califano v. Webster, 430 U.S. 313 (1977); Califano v. Goldfarb, 430 U.S. 199 (1977). See also Massachusetts v. Feeney, 47 U.S.L.W. 4650, 4654 (1979). (explicit sex classification requires "exceedingly persuasive justification").

(Continued)

clear. It found "such classifications as age and sex are not arbitrary or unreasonable, and the classifications are justified by the compelling governmental interest which is to 'provide for the common defense'." In United States v. Offord, 373 F. Supp. 1111, 1118 (E.D. Wis. 1974), the court found the governmental interest in the national security "extremely urgent" and stated that nothing in Frontiero v. Richardson, 411 U.S. 117 (1973), required retreat from the decision in United States v. Camara, supra, a decision utilizing the rational basis test.

2/ Examples of classifications involving fundamental rights are interstate travel, voting and freedom of expression. Shapiro v. Thompson, 394 U.S. 618 (1969); Bullock v. Carter, 405 U.S. 134 (1972); Chicago Police Department v. Mosley, 408 U.S. 92 (1972). Prime suspect classifications are race and national origin. Loving v. Virginia 388 U.S. 1 (1967); Korematsu v. United States, 323 U.S. 214 (1944).

3/ The only court which has applied this standard to an equal protection challenge to the Selective Service System's exclusion of women found it unconstitutional. United States v. Reiser, 394 F. Supp. 1060 (D. Mont. 1975), rev'd, 532 F.2d 673 (9th Cir.), cert. denied, 429 U.S. 838 (1976). The Court of Appeals applied the rational basis test. 532 F.2d at 673.

In addition to establishing an elevated review standard for sex-based classifications since the last draft, the Supreme Court has also made clear during this decade that in scrutinizing such classifications it will be guided by two basis principles. First, gender classifications based on stereotypical notions about women will not be tolerated as a proxy for some other individual characteristic.^{4/} Second, gender classifications which appear to favor women will not be protected from scrutiny.^{5/}

For example, in Orr, the Court invalidated an Alabama alimony statute which authorized the imposition of alimony obligations on husbands, but not wives. The Court stated explicitly "(t)he fact that the classification expressly discriminates against men rather than women does not protect it from scrutiny."^{6/} The Court went on to reject use of "sex as a proxy for need" in furthering the important legislative objective of providing help for needy spouses. It reasoned that even if sex were a reliable proxy for need, there was no reason to use it as such, since individualized hearings regarding the parties better served the purpose and were in fact used in Alabama.

In Califano v. Goldfarb, 430 U.S. 199 (1977), the Court invalidated a social security provision automatically qualifying a widow for survivor's benefits but requiring a widower to prove that his wife had supplied three-quarters of the couple's support.

^{4/} Califano v. Goldfarb, 430 U.S. 199, 238 (1977); Weinberger v. Wiesenfeld, 420 U.S. 636, 643 (1975); Frontiero v. Richardson, 411 U.S. 677, 681-682 (1973); Reed v. Reed, 404 U.S. 71 (1971).

^{5/} Orr v. Orr, 47 U.S.L.W. 4224 (1979); Califano v. Goldfarb, 430 U.S. 199 (1977); Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

^{6/} Although involuntary conscription ranks as a burden and thus exclusion of women is viewed as a favor, deeper reflection reveals the paternalistic attitude motivating the "protection" of women from military duties. Such protection denies women equal stature with men. See United States v. Reiser, *supra*, 394 F. Supp. at 1062, 1069; Ruhn, Constitutional Law - Equal Protection - Sex Discrimination - Selective Service Laws, 1976 Wis. L. Rev. 330, 347 (1976).

It held the one-way dependency test impermissible notwithstanding its recognition that the law could be perceived as discriminating against men and favoring women and its acknowledgment of the reality that the stereotypical view of wives as dependent on their husbands had empirical support. 7/

Application of the foregoing principles to compulsory draft registration limited to men indicates the constitutional infirmity of such a classification. First, it is clear that deference to congressional judgment in military matters will not preclude meaningful judicial review. 8/ Second, while there is judicial support for the proposition that involuntary conscription may be necessary to satisfy a vital governmental objective in maintaining the national security by means of an effective military force, it does not follow that the imposition of this obligation on men alone is "closely and substantially" related to the accomplishment of that objective.

It bears emphasis that the heated debate over whether women

7/ During this decade, the Supreme Court has upheld classifications which it perceived as preferential to women where it has found that the classification intended to compensate women for specific differentials favoring men [Schlesinger v. Ballard, 419 U.S. 498 (1975)], or where it was a direct, temporary response to discriminatory economic conditions faced by women [Califano v. Webster, 430 U.S. 313 (1977)], or where it was perceived as remedial for some women and harmful to none [Kahn v. Shevin, 416 U.S. 351 (1974)]. The Court has made explicit that "the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." Weinberger v. Wiesenfeld, 420 U.S. 636, 648 (1975).

8/ See Frontiero v. Richardson, 411 U.S. 677 (1973); Owens v. Brown 455 F. Supp. 291 (D.D.C. 1978).

should be assigned to combat units 9/ is not central to determining whether a males-only draft registration furthers the objective of maintaining the national security with a combat-ready military.

Congress has already recognized this in an analogous context.

In 1975 it enacted legislation permitting women's entrance into the military academies in spite of the Pentagon's principle

objection that the academy issue and the combat question were

inseparable. It repeatedly heard testimony from military officials to the effect that:

The issue of whether women should become cadets at West Point is tied directly to the basic question of whether Americans are prepared to commit their daughters to combat... 10/

9/ The position that women should be permitted in combat is best stated by Kanowitz and Hale:

Perhaps the most important factor facilitating the effective use of women in the Armed Forces is the technological revolution in warfare that has taken place over the last generation. The changes include the use of bombs, missiles and high-powered guns which minimize the strength required and maximize the precision and technological ability needed. Such changes make women more fit to wage war than ever before. In fact, technology would seem to be moving toward making the traditional warrior obsolete and the technician all important.

Kanowitz and Hale, Women and the Draft: A Response to Critics of the Equal Rights Amendment, 23 Hastings L.J. 199, 203 (1971).

The argument that women are unable to perform in combat is based on stereotypical notions of combat and of women's physical inferiority. Yet, there are citizens of both sexes who will not be capable of arduous physical duty. This does not mean, however, that they are not qualified to serve in the military. Physical exams are already performed on persons wishing to enlist in the military to test whether they would be physically capable of acquiring a level of physical fitness during basic training that would qualify them for any job. This exam could be tailored to determine various levels of physical capacity and to relate those levels to occupational specialties. This is routinely done with regard to mental ability. Binkin and Bach, *WOMEN AND THE MILITARY* 75 (1977). The Army already associates a profile serial on the physical exam with job specialties. Id. at 79. The Air Force classifies its specialties according to the type of work involved ranging from sedentary to very heavy. Id. at 81-82. These means of differentiating physical capacity and correlating that ability with assignment could and should be refined to maximize the effective utilization of both men and women.

10/ Testimony of General Fred C. Weyand, on H.R. 9832, A Bill to Eliminate Discrimination with respect to the Appointment and Admission of Persons to the Service Academies, Hearings before Subcommittee No. 2 of the House Armed Services Committee 93, 166 (1975).

It nonetheless resoundingly passed the amendment to permit women's entrance without legislating on the inflammatory combat issue. ^{11/}

The perception reflected in the 1975 Congressional judgment that the two issues are separate is altogether accurate. The percentage of individuals eligible for the draft who actually end up in combat positions is so small that whether or not women should be assigned to them is largely irrelevant to determining whether or not they should be excluded from a draft. In the last draft, less than 1% of those eligible were inducted and subsequently assigned to a combat unit. ^{12/} If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit -- whether or not there was a female combat exclusion -- would be negligible. See United States v. Reiser, 394 F. Supp. 1060, 1067 n. 11 (D. Mont.: 1975). Even in the basic Army infantry division nearly two-thirds of the troops serve in a support capacity. ^{13/} For every person on the front line, there are large numbers of administrative, clerical, technical, logistical, medical and maintenance personnel performing support functions.

Even applying the military's own broader exclusionary classifications, many positions are "sex-interchangeable". The Army estimates 286,000 out of 567,000 jobs can be filled by either sex. ^{14/} The Air Force calculates 94% of enlisted jobs are

^{11/} Binkin and Bach, WOMEN AND THE MILITARY 43 (1977).

^{12/} 118 Cong. Rec. S. 4390 (1972).

^{13/} Report by the Special Subcommittee on the Utilization of Manpower in the Military of the House Committee of Armed Services, 92d Congress, 2d Sess. 14658 (1972).

^{14/} Office of Assistant Secretary of Defense, BACKGROUND STUDY, USE OF WOMEN IN THE MILITARY 5-8, 5-9 (1977).

interchangeable. ^{15/} While figures are not yet available, the number of Navy jobs open to women should have increased dramatically since judicial invalidation of the statute precluding females from serving on ships. ^{16/} Thus, whether or not women are assigned to combat, it is clear that they are qualified for a full range of non-combat positions.

The absence of a substantial relationship between exclusion of women from a draft registration requirement and national security is underscored by changes in military policy which reflect the military's recognition that women's enlistment actually furthers its goal of fielding an effective force. In 1972, the decision was made to increase the proportion of women in the military. ^{17/} At that time, women constituted only 1.9% of all military personnel. ^{18/} That percentage grew to nearly 6% in fiscal year 1977 and is programmed to reach 12% by fiscal year 1984. ^{19/}

Moreover, the vast majority of occupational specialties have recently been opened to women in all branches of the military. Only 22 of a total of 345 military occupational specialties in the Army remain closed to women. ^{20/} Only 4 of the 230 specialties in the Air Force are closed to women and one of those is being tested to see if women can satisfactorily perform all aspects of the specialty. ^{21/} In the Navy, only 16 of 99 ratings are closed

^{15/} Id. at 41-45.

^{16/} Owens v. Brown, 455 F. Supp. 219 (D.D.C. 1978).

^{17/} Binkin and Bach, WOMEN AND THE MILITARY 14 (1977). Although the 2% limitation on female enlistment strength was lifted in 1967 [81 Stat. 374-84], women constituted less than 2% total military strength for the remainder of the decade.

^{18/} Department of Defense, AMERICA'S VOLUNTEERS 69 (1978).

^{19/} Id.

^{20/} AMERICA'S VOLUNTEERS, *supra*, Appendix H at 299.

^{21/} Id.

to women and this is expected to drop to eleven. ^{22/} In the Marines, women are excluded from only 4 of the 38 occupational fields. ^{23/}

That women's exclusion from a draft registration requirement does not substantially further present-day military purposes finds further support in recent studies of the impact of women on military effectiveness. ^{24/} One study, conducted by the Army Research Institute in October, 1977, concluded that unit performance in an intensive 72 hour field exercise was not impaired by female content of up to 35%, the maximum percent tested. ^{25/} Another, a May 1978 test, reveals that in a several weeks extended exercise, which included 3 weeks in field conditions, up to 10% women, again the maximum percent tested, did not hinder unit performance. ^{26/} In 1972, the Navy's experimental assignment of females to the U.S.S. Sanctuary revealed that women perform at "every ship board function with equal ease, expertise and dedication as men do." ^{27/} Indeed, in 1978, based on the Sanctuary experiment

^{22/} Id. at 300.

^{23/} Id.

^{24/} In 1978, the Department of Defense found that "women represent a major underutilized manpower source." Department of Defense, America's Volunteers 69 (1978). In a 1977 study it found that:

In view of the reduction in the number of young men expected in the labor market in the 1980's and 1990's, it would seem prudent that the Army should pursue a more ambitious program to find ways to use more high quality women to meet their enlisted requirements. It would appear that more realistic constraints in their personnel programs would permit significantly larger increases by 1982. Office of Assistant Secretary of Defense, BACKGROUND STUDY, USE OF WOMEN IN THE MILITARY 46 (1977).

^{25/} U.S. Army Research Institute, Women Content in Units Force Development Test (MAX-WAC) I-2 3 (1977).

^{26/} U.S. Army Research Institute, Women Content in the Army, Reforger 77 (REF-WAC 77) I-4 (1978).

^{27/} "Evaluation of Women Aboard the USS Sanctuary" (Memorandum from the Commanding Officer, U.S.S. Sanctuary (AH-17) to Chief of Naval Personnel, Nov. 19, 1973), 15-1 cited in Binkin and Bach, supra, at 93.

and impressive additional documentation, the statutory prohibition against women serving on board naval ships was held unconstitutional under the equal protection ~~component of the~~ fifth amendment. ^{28/}

In the face of the above experience and data, the conclusion of the Department of Defense that "women are demonstrating that they are capable of playing an even larger part in the national defense"^{29/} was unavoidable. Although the outer parameters of women's participation may be unclear, their ability to perform a substantial role in the military has been well documented and widely recognized in this decade.

Once the combat issue is put in proper perspective and the evidence of women's recognized ability to perform military functions is assessed, it becomes apparent that an exclusion of women from a draft registration requirement would be the product of the archaic notion that women must remain "as the center of home and family." ^{30/} One court apparently recognized as much about the Congress which enacted the prior draft law. In upholding that law's exclusion of women, the court stated:

In providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning. ^{31/}

At one time judicially accepted, such romantically paternalistic underpinnings of sex-based classifications are intolerable under current equal protection doctrine. ^{32/} Overbroad generalizations

^{28/} Owens v. Brown, 455 F. Supp. 291 (D.D.C. 1978).

^{29/} America's Volunteers, *supra*, at 77.

^{30/} Hovt v. Florida, 363 U.S. 57, 62 (1961).

^{31/} United States v. St. Clair, 291 F. Supp. 122, 125 (S.D.N.Y. 1968).

^{32/} See Orr v. Orr, 47 U.S.L.W. 4224 (1979); Califano v. Webster, 430 U.S. 313 (1977); Frontiero v. Richardson, 411 U.S. 677 (1973); Owens v. Brown, 455 F. Supp. 291 (D.D.C. 1978).

concerning one sex or the other no longer can be used to substitute for a functional, gender-neutral means of distinguishing between the physically unfit and the able-bodied. The paternalistic attitude inherent in exclusion of women from past draft registration requirements not only relieved women of the burden of military service, it also deprived them of one of the hallmarks of citizenship. Until women and men share both the rights and the obligations of citizenship, they will not be equal.

In sum, when the evidence of women's participation in the military since the last ~~draft is measured~~ against the new heightened review standard for sex-based classifications, it is clear that their exclusion from a draft registration requirement will not adequately ("closely and substantially") relate to the maintenance of the national security. Consequently, should Congress reinstitute a compulsory draft registration requirement using sex as a proxy for an individual's capacity to discharge military duty, there can be no doubt that litigation would be brought and that the legislation would almost certainly be invalidated as violative of the equal protection component of the fifth amendment.

Mr. WHITE. Thank you, Ms. Steele.

Mr. Nichols.

Mr. NICHOLS. Thank you, Mr. Chairman. Mr. Landau, you have been before our committee on other occasions. You indicated that there is something immoral about the whole issue of registration and drafting young people. You said it was a moral issue. So I interpret you feel it is something immoral calling young people to serve their country.

Mr. LANDAU. No; I think what I was saying is that there are moral implications of a draft during peacetime, and registration in terms of the society as a whole. We have to realize that there will be large numbers of people who will not only oppose the system but will simply not participate in it for one reason or another, and I think that presents a question for the society to deal with. What do you do with those people, and is there a less intrusive means of meeting our military requirement during peacetime, and we believe there is an alternative, and so I am talking about the moral implications. I am talking about, you know, in peacetime what happens to large numbers of people who do not want to participate.

Mr. NICHOLS. OK. To put the record straight, the American Civil Liberties Union has, since your very inception, been opposed to drafting young men or women, for that matter, to serve in service to the country.

Mr. LANDAU. In peacetime.

Mr. NICHOLS. Isn't it true—did you support the draft on December 9 when the President called the Congress together 2 days after Pearl Harbor, when the Japanese had sunk our battleship *Arizona* and 1,200 people were bombed in Pearl Harbor, isn't it true that your organization opposed the draft even then?

Mr. LANDAU. I don't know the answer to that question. I know our policy on the draft was written in 1968.

Mr. NICHOLS. When you come before our committee, I wish you would do a little research on that before you come again, if you would, because I may ask you that question again. I believe the record shows that.

Now, let me go to another aspect of your testimony. You stated, I believe, that the system of conscription has always been a last resort when our system is imminently threatened. Let me remind you that in World War II the Selective Service Act was passed in the House by one vote. It was passed by the Congress and was signed into law by the President on September 16, 1940. That was a full year ahead of Pearl Harbor, for that matter. The structure that we put into existence in peacetime, I remind you, amounted to about 1,800 Reserves and Guard officers.

To look at the registration procedure, we had a million volunteers who took care of registering people in peacetime, and we had 100,000 registration sites set up. As a matter of fact, a month after that bill passed on September 16, 1940, we had registered 16 million American men. Now, this is a full year ahead of Pearl Harbor.

I suggest to you, Mr. Landau, that the situation in the world today may not be a great deal different from what it was back in 1940 and 1941. We have 100,000 Soviet troops in Afghanistan. There is Pakistan,

and we have turmoil in Nicaragua and El Salvador. So I don't feel like the situation is greatly different than we might have had back in that time.

Let me ask you one final question, if I might, Mr. Chairman. Being that you don't support registration and you don't support the draft, what means do you envision by which this country would supply the manpower for defense in time of need?

Mr. LANDAU. We believe that at this time the All-Volunteer Force seems to be adequately working for that purpose.

Mr. NICHOLS. You think it is?

Mr. LANDAU. I think that the statistics show that, and the Defense Department certainly believes that, and as you know, their statistics that they have published and the reports that have been done show that there are weaknesses and problems, but those problems are solvable in the context of the All-Volunteer Force.

Mr. NICHOLS. Are you aware of the tremendous shortfall we have in the Reserves and the National Guard and so forth?

Mr. LANDAU. I am, but I am also aware of the new incentive programs that went into effect just last year, which are meeting with a great deal of success and have increased the recruitment for the Reserves over the last year, and there are other programs, I believe, Secretary Pirie has testified on behalf of in the last few weeks, which he believes certainly will further increase the Reserves.

Mr. NICHOLS. I don't share your optimism on that, Mr. Landau. I always enjoy your coming before the committee, though. I appreciate your presence here.

Mr. LANDAU. Thank you.

Mr. WHITE. Mrs. Holt.

Mrs. HOLT. Thank you, Mr. Chairman. I will try to be brief.

Ms. Steele, I have to take exception to one thing you said in speaking about women in the military. You say women have no effect on military preparedness up to a certain percent. I believe they have a wonderful effect on it. They are doing a tremendous job. They are really increasing our military preparedness, and they are volunteering to do it. They are fine, wonderful women, and we are getting all of them that we can use through that volunteer method.

I would like to ask each one of you a question: Do you think it is in our national interest to have a military?

Mr. LANDAU. Well, I think the answer to that is yes.

Mrs. HOLT. How about you, Ms. Steele?

Ms. STEELE. Yes.

Mrs. HOLT. Do you think our job then should be to try to provide the best managed, most cost-effective military that we can provide, or should we be trying to find opportunities to provide equality for everybody? I don't mean to make the military different on equal opportunity. Where women are serving I think it should provide equality, but should that be our principal goal?

Ms. STEELE. I think having a well-managed effective military force is a most important interest. Women's participation in that is not inconsistent with having the best military we can.

Mrs. HOLT. I disagree because I haven't gotten any of the military people who have spent their lives training and learning how to defend

this country—they are willing to go out and lay their lives on the line so that you have the freedom to come here and make the kind of statement that you are making this morning, and there are very few countries in the world today, you know, where you can do that, and I think that is what we are fighting for—but these guys are saying that there is no military reason to register women or draft them. That is the point I am making, that they really know what they are talking about. I feel they are the ones that we have to listen to. We have to accept their reasoning.

Do you feel that we should lend credence to their position that there is no military reason to register women?

Ms. STEELE. I think there is a military reason to register women. I think there is a military reason to use women just the way you have used all of your able-bodied people who can fulfill the job that has to be done.

Mrs. HOLT. We are doing that through the volunteer method.

Let me ask you another question. Do you think that freedom is threatened in the world today? Either of you may answer that.

Ms. STEELE. I don't think freedom in the world today is threatened to the degree that we need to start to register people for the military draft.

Mrs. HOLT. How about you, Mr. Landau?

Mr. LANDAU. I would agree with that.

Mrs. HOLT. Thank you, Mr. Chairman.

Mr. WHITE. Are there any other questions?

Mr. Montgomery.

Mr. MONTGOMERY. Thank you, Mr. Chairman.

After hearing our witnesses this morning, I really get the feeling that their philosophy will almost mean that we will not have a draft or registration unless a disaster such as landing on our shores occurs. Is that basically your feeling, that we should not move out in world affairs but wait until the enemy lands, and then we have a draft and then we have registration?

Mr. LANDAU. I think the position of the ACLU is that there does not necessarily have to be a declaration of war, but what there has to be is a decision by the President and the Congress together that the country is in a state of national emergency and that our interests are so threatened that we have to begin instituting wartime national security measures. So I don't believe we have to wait until the enemy is landing on our shores, as you put it, but we believe that today we don't face the kind of threat that would justify a draft or draft registration.

Mr. MONTGOMERY. Do you think the Soviet movement into Afghanistan is a threat to this Nation?

Mr. LANDAU. I would say that the Soviet Union's move in Afghanistan is not a direct threat to the security of this Nation.

Mr. MONTGOMERY. What about the Cuban situation with the Soviet brigade, the Ambassador in Colombia being held captive, with 50 hostages in Iran, and other parts of the world falling apart? What does it take before you would call it an emergency?

Mr. LANDAU. I think the President himself has stated, and many times in the last couple of weeks, that we are by no means close to

going to war or reaching this kind of situation that we would believe would justify a draft or draft registration. In fact, Mr. Brzezinski said a week or 10 days ago that he believes right now we could meet any threat that the Soviet Union could mount in the Middle East region right today with the All-Volunteer Force.

Mr. MONTGOMERY. Right now, what did he say?

Mr. LANDAU. He said we could meet any threat in the Middle East today with the All-Volunteer Force.

Mr. MONTGOMERY. You don't believe that, I know. Nobody else does.

Mr. LANDAU. Well, as long as the President—

Mr. MONTGOMERY. You don't really believe that statement, do you?

Mr. LANDAU. I believe that the All-Volunteer Force is adequately meeting our defense requirements today, whatever they are.

Mr. MONTGOMERY. You mentioned the Director of the Selective Service System. I thought he came out loud and clear this morning that the earlier report that was made about registration, the assumptions were wrong, they made mistakes and they are going back and take another look at it. And then you in your report to us say that is a wonderful excellent report. I believe you should give the man credit that they made a mistake, they brought up a bad report, and they want to erase it.

Mr. LANDAU. I think that Mr. Rostker did say this morning, however, that although the M-plus 4 and the other figures are slightly pushed back, he did at the very end of that statement say that that report, that plan could still meet DOD's requirements, not on the accelerated timetable as it was originally drafted, but it still could meet DOD's requirements without peacetime registration.

Mr. MONTGOMERY. I think one good that has come out of this, whether we get peacetime registration or not, and I think we will, that we have found out that we really don't know much about registration and should start learning more about it.

Mr. White at OMB admitted, he said we have found so many headaches just trying to find out how to go about a peacetime registration. Also the Selective Service System is in completely chaotic condition, it is in the deep freeze. Why gamble with the security of this Nation—and it is a gamble—why gamble with the security of this Nation when we can try a peacetime registration. We can save up to 60 to 90 days in getting these people called up in uniform. What is wrong with that? We are not talking about a lot of money, \$13 million a year.

Mr. LANDAU. We just think that there are other costs that have to be looked at in this context, and, for example—

Mr. MONTGOMERY. We have a \$615 billion budget, and we can't give the Selective Service \$13 million?

Mr. LANDAU. How much will it cost to prosecute 100,000 draft resisters? That cost has not been estimated.

Mr. MONTGOMERY. I don't buy that. I think you misjudge the young people. If you go out and stir them up you are going to get some. I think you are going to be surprised. I think the young people are going to register. I think well over 95 percent of them are. They have done it in the past, and they will do it again. You guys are the ones that stir them up and make them not go to register.

Mr. LANDAU. Well, I think the figures show that if you say 95 percent that means 5 percent will not register. That is still 200,000 people who will not register, for whatever reason, deliberately or inadvertently. When you are talking about a springtime registration, in 5 days there will be a considerable number of young people who won't even know they are supposed to do it. You are talking about going down to local post offices and if you are doing it in June, when college kids are out and changing their addresses for summer jobs, I think you are going to find that there are a lot of inadvertent nonregistrants, and that creates a problem. I think that is a question the administration ought to answer right now about what is the Justice Department's policy about this, and they have not answered that yet.

Mr. MONTGOMERY. Well, everybody wants to study around here, and if you want to kill something you bring up a study and get some more answers and look into it further. I am very sincere. I just don't think that we should gamble with the security of this Nation over peacetime registration. I think a great majority of the people are really behind the Congress, and they think we ought to have some kind of registration and they want classification, and some of them certainly want some type of limited draft.

Mr. WHITE. Thank you, Mr. Montgomery.

I might say to the witnesses that you have mentioned 7 days as being the postmobilization time for registering in the event of an emergency. That was calculated by the administration when they were opposed to standby registration. Now the administration has said this figure is very optimistic and not realistic and it has been characterized by some of the members of the committee who looked into it as being ridiculous because it calls for 2 million people and distributing all forms in 7 days. If you can do that, good, then you are better off than 99 percent of the American public.

Now, is it true that if we were trying to draft women and men into the military, and even registering women for the military and for combat purposes, that you all would be here pleading against that, wouldn't you?

Ms. STEELE. We certainly oppose military registration, yes.

Mr. WHITE. And you are going to test whatever this committee does or whatever Congress does relating to registration or the draft?

Ms. STEELE. Should Congress only require registration of men, we will.

Mr. WHITE. It doesn't matter what we do, you are going to test it out no matter what Congress does, it is going to be tested in the courts.

Ms. STEELE. I think you are right. Someone will test it in the court, whether the ACLU—

Mr. WHITE. Let's try it and find out what the court says.

Mr. LANDAU. Our position though is there is a constitutional standard which has been well established in the area of gender discrimination, and we are asking this committee to take that into consideration.

Mr. WHITE. I am not talking about you personally, although I am going to refer my question to you. What obligation do you think the young person in this country has today for the defense of this Nation? Would you define it for me?

Mr. LANDAU. It is a very broad question, and I think that when you talk about putting the conflicts of the draft—

Mr. WHITE. I just want the observation. Put it any way you want to.

Mr. LANDAU. That is an individual's choice. That is up to the individual. It is not for any of us to say what each individual's obligation is.

Mr. WHITE. We don't worry. We tell everybody they can do what they want to, and we hope they will come to our party.

Mr. LANDAU. I don't think that the Government can tell people what their obligations are to the country. I think that kind of compulsion is not consistent with our democratic principles.

Mr. WHITE. Well, what do you feel the obligation is? Is there any obligation at all uniform to all people in the country in defense of their Nation?

Mr. LANDAU. To abide by the general laws of the country.

Mr. WHITE. But the laws of the country would be registration and draft. Would you say that was an individual decision?

Mr. LANDAU. Whether the individual ultimately has to decide whether they obey their particular legal obligations.

Mr. WHITE. Do you think that is a proper way to proceed for each individual to make that choice?

Mr. LANDAU. Yes.

Mr. WHITE. What would happen in the event—I am not talking about you as an individual—if the enemy were landing on our shores tomorrow, would you accede to be drafted?

Mr. LANDAU. I personally, yes.

Mr. WHITE. Would you volunteer?

Mr. LANDAU. I might.

Mr. WHITE. Would you volunteer or accede to be drafted in the event of an attack in Europe?

Mr. LANDAU. I don't know. I don't know that.

Mr. WHITE. Have you ever had military service?

Mr. LANDAU. No; I have not.

Mr. WHITE. Have you ever been called or given any draft status?

Mr. LANDAU. Yes.

Mr. WHITE. And were you 1-A at that time?

Mr. LANDAU. Yes.

Mr. WHITE. And you didn't relinquish that status?

Mr. LANDAU. No.

Mr. WHITE. That is to your credit.

Well, this committee is, I think, inclined to make their decision not based on only social considerations or philosophical considerations. I think this committee is going to act on what they think are the defense needs of this country. Without that security we may not have any of the freedom that you talk about, and, of course, that is our charge under the Constitution. If we are derelict in that we can lose the whole ball game if we are wrong. We have to opt in the direction of security rather than in the direction of defense of the system.

Mr. HOGAN. Mr. Chairman.

Mr. WHITE. Mr. Hogan.

Mr. HOGAN. The Chief of Naval Operations testified 2 or 3 weeks ago that if we didn't get more people and have better retention that we are going to have to lay up ships next year. That is a pretty serious situation, don't you think?

Mr. LANDAU. Yes.

Mr. HOGAN. What would be your remedy that we can pass on to the Chief of Naval Operations to take care of that situation?

Mr. LANDAU. It is not my role to suggest different kinds of incentive programs or retention programs for the military. I believe that they can create such programs for the skilled people that they are looking for.

Mr. HOGAN. Do you have any suggestions to pass on to them?

Mr. LANDAU. I don't have any.

Mr. HOGAN. Ms. Steele, isn't there something unique about the military in the general nature of things?

Ms. STEELE. Yes; I will agree with that.

Mr. HOGAN. Constitutionally as well?

Ms. STEELE. Well—

Mr. HOGAN. I mean, yes or no?

Ms. STEELE. No.

Mr. HOGAN. There isn't?

Ms. STEELE. No.

Mr. HOGAN. What about two recent cases involving Supreme Court consideration of petitioners and signatures that were prohibited by the base commander? I thought that was pretty well based upon the uniqueness. The decision was pretty well based upon the uniqueness of the military situation.

Ms. STEELE. I think that for the individual the military is a unique situation. Certain rights circumscribe women in the military, but I think the court and the Supreme Court have not deferred so absolutely to military deference when they are called upon to examine the reaches of the equal protection guarantee. Time and again the Court will look to the constitutionality of the statutes which affect the military.

For example, in *Owens v. Brown*, that we have been talking about so much today, the Government argued you must defer to military and congressional expertise in military matters, and Judge Sirica didn't, because it didn't involve the day to day regulation of military life. It simply was holding of a statute unconstitutional. It was really an area where the courts are expert, in constitutional law, and they have shown that they are willing to measure statutes which affect people in the military by the equal protection guarantees.

Mr. HOGAN. Do you think there is anything unique, however, about section 8 in this country?

Ms. STEELE. About what?

Mr. HOGAN. Is there anything unique about the application of article I, section 8, in the context of mobilization and the national security as against whether or not there is equal protection in industry or in some other Government agency?

Ms. STEELE. No; I think it is a standard that the court would apply equally in terms of registration for the draft or whatever. Once the court looks to the classification and says, you know, this is a matter that we will look to, they apply the equal protection test and now the heightened scrutiny test.

Mr. HOGAN. Thank you.

Mr. WHITE. There being no further questions. Thank you very much. We appreciate your appearance here today.

Mr. LANDAU. Thank you.

Mr. WHITE. At this time we call on the Honorable Bella Abzug. Her testimony will be placed in the record unless she comes in.

Our next witness is Ms. Robbi Smith, from the National Coalition for Women in Defense.

I would like to ask you to hold your testimony to 10 minutes. If you have testimony that is prepared, and you want to place it in the record, you may do so.

Ms. SMITH. Yes, sir, I would like to.

Mr. WHITE. Without objection then your testimony is placed in the record this morning.

STATEMENT OF MS. ROBBIE SMITH, NATIONAL COALITION FOR WOMEN IN DEFENSE, ACCOMPANIED BY MS. LYNN ALLISON BROOKS

Ms. SMITH. Mr. Chairman, I am Robbi Smith, and I am with the National Coalition for Women in Defense. This is Ms. Lynn Allison Brooks. She also represents the National Coalition. Ms. Brooks was a WAC in World War II, served in the Army Air Force with assignments in Vietnam, and in the Reserve.

We are pleased to have the opportunity to present the views of the National Coalition for Women in Defense today. As former WAC's, Ms. Brooks and I feel quite strongly about the positive effect and the undeniable value of the service women have given in the Armed Forces and about the military contributions which women have made and continue to make to our national security.

Let me preface my remarks by commenting that I perceive you and the committee as pursuing the same basic thread of thought in questioning on the issue of registering women that you were pursuing on the question of utilizing women in the military. That basic thought or concern is, the question the subcommittee wants answered is not how to register women and advance the cause of social justice, but how does registering women further the national defense.

Although I disagree with your premise that social justice can be separated out of the national interest, I do understand why it is incumbent upon this subcommittee to frame its inquiries in the context of the mission of the military. It may be difficult for people who are not involved with the management of the military to understand your apparent single-mindedness on this issue.

I know for myself, as a new naval officer, one of the most difficult concepts for me to come to grips with was that the mission of the military must come first, the mission to defend the country against all enemies is paramount. The people in the military then are the tools which the military uses to accomplish its mission.

For me, perhaps all the more so, because I had been studying for the ministry before I came into the Navy, it was particularly difficult for me to accept the idea of subordinating people to mission, but I learned. That is a fact of the military, the national defense comes first, and it is in the context of that mission that I wish to discuss the value of registering women.

The purpose of registration, as I understand it, is to create a pool of people from which in time of national emergency the Congress so

authorizes a random selection of individuals can be made. Those individuals selected would then receive induction notices. The ratio of induction notices to inductees is 5 to 1. I am quoting some figures I have. Therefore you need 100,000 or 200,000 inductees, and you must select 500,000 or a million names. It is from those people that the services draw their resource requirements.

It would seem statistically sound to infer that the larger the size of the original pool, which is the total number of people you register, the more likely it is that the service will be able to find the kind of individuals they need. The larger the pool the more quality and talent available.

The logic or extension of this is that we should register everyone in the country. Obviously that is not feasible, so we traditionally have limited the size of the pool to a given age group, but the logic still holds. Within the selected age group, the larger the pool, the more likely the services will be able to find the people they need; thus, including women in the registration process increases the size of the pool, increases the talent and the quality of the pool, and increases the likelihood of the services fulfilling their human resources requirements with qualified people, and thus enhances the ability of the services to perform the mission of national defense.

A key point here is the view of the services. Individuals would be selected on the basis of a human resources services. If we need more air controllers, we would look for people who have that training and potential. If we need more combat troops, we would look for people to fulfill that need. If sufficient women volunteer to fulfill the needs of the services for women—and there are the current combat exclusion restrictions—then the services will not need to induct women. If there are not sufficient volunteers—and during World War II there were not enough women volunteers, and they did consider at one time a draft of women for national service—if we don't have enough volunteers, then we draft them.

To repeat what we heard earlier this morning, men and women would not have to be drafted in equal numbers to meet the equal protection requirements of the Constitution. We are not advocating a 50-50 military, and the number of men and the number of women would have to be left in the views of the services and the jobs they have for each to fill.

Therefore, I state in my written testimony, we believe that the national security can only be enhanced by the inclusion of women in any registration. The talent and commitment of women have been and will be vital resources to the military. The Nation stands only to gain by using all our human resources to the fullest. If registration becomes a reality, registration of women would be in the national interest.

I would like to read resolution 25 of the American Legion:

Resolved, by the American Legion in National Convention assembled in Houston, Texas, that while complimenting our fine men and women now engaged in the military programs of our country, we reaffirm our continuing support of the universal military training which will require as far as possible every person, his or her obligation to support the defense of our country.

And the Disabled Veterans of America have also come out supporting compulsory registration for military purposes. In talking with them yesterday, they also favor drafting of women.

One last point, and that is the message that we send to other countries. It has been suggested that to include women in the registration will weaken or dilute the message that we send. That demeans women and dismisses the history of service and contributions that women have made to this country's Armed Forces. I suggest that the message we send will be precisely the message we choose to send, and I urge that the message we choose to send be that this Nation is so important to all of the citizens that our freedom and our way of life are so important to all of its citizens that all of the citizens, men and women, are willing to stand by this country and serve in the defense of this country.

That concludes my testimony.

WRITTEN STATEMENT OF MS. ROBBIE SMITH

Mr. Chairman and members of the subcommittee, thank you for this opportunity to testify on behalf of registering women for military service. I am Robbie Smith, representing the National Coalition for Women in Defense. The Coalition was formed in 1977 to protect and extend the rights of women in the military, families of military members, and civilian women employed by the military. Our statement today is supported by the following organizations:

American Association of University Women, Federally Employed Women, Institute for Public Representation, National Federation of Business and Professional Women's Clubs, Inc., WEAL Educational and Legal Defense Fund, Women's Equity Action League, Wider Opportunities for Women.

On February 8, 1980, President Carter requested authority to register women for non-combat related military service to the nation, to supplement his authority to register men. The National Coalition strongly believes that any registration process must, for the following reasons, include both men and women.

Women are increasingly becoming recognized as responsible citizens, gaining access to equal options and equal responsibilities. One of the greater responsibilities of citizenship is the support and defense of the Constitution of the United States as members of the Armed Forces. Historically, women have fulfilled this duty as volunteers, contributing significantly in the accomplishment of the mission of the military. Women have been an integral part of the military since World War II, and their numbers and duties within the services continue to grow.

To fail to include registration of women if men are to be registered, at this point, not only discounts the contributions of women to our National Defense, but discounts women as responsible adult citizens of this nation, as well.

In any period of national emergency, the Armed Forces need access to large pools of personnel from which to select individuals to meet their requirements. This is not an issue of sheer numbers, since it is not necessary to register women merely to accumulate sufficient people in the pool. Rather, it is a question of the quality of the pool. Including women in registration increases not only the size of the pool, but the talent within it. As pointed out in the Presidential Recommendations for Selective Service Reform, February 11, 1980, "Women should constitute a part of the personnel inventory from which the services could draw to meet requirements as needed. The utilization of women would be determined in accordance with the needs and mission of each service."

We believe, therefore, that the National Security can only be enhanced by the inclusion of women in any registration: the talent and commitment of women have been and will be vital resources to the military. The nation stands only to gain by using all our human resources to the fullest. If registration becomes a reality, registration of women would be in the national interest.

In conclusion, we reject the negative premise that registering women would display a national weakness. We consider statements to this effect to be an affront to all women who have honorably served in the military in the past, and to those who presently serve our nation. We strongly urge the Congress to consider the contributions of women in any discussion of registration. This nation is ours, as well, to love, protect and defend alongside our brothers.

Mr. WHITE. Thank you. I appreciate your testimony.
I will call on Mr. Montgomery.

Mr. MONTGOMERY. Thank you very much. I want to thank you witnesses for being here this morning. I tried to follow your testimony. What is your feeling about registration itself, peacetime or postmobilization registration?

Ms. SMITH. The feeling of the group is that if registration is determined to be in the national interest, we support registration. Do you want my personal opinion?

Mr. MONTGOMERY. I am talking about men and women. In other words, you support it if it is in the national interest, which President Carter said now it is, in his judgment, as Commander in Chief. Your group supports this registration of women?

Ms. SMITH. Right, as determined to be in the national interest.

Mr. MONTGOMERY. I might be getting in trouble. What is your personal view?

Ms. SMITH. I have very strong feelings about the obligations of citizenship. I think we have to balance the rights of citizenship with the obligations of the citizenship. We do owe this country our service.

Mr. MONTGOMERY. Of course, that is really what this committee has to face tomorrow when we vote pertaining to women and registration, and then also we have some problems in the Appropriations Committee, whether for men or women, getting the registration funded, which I assume your group would support, funding for registration?

Ms. SMITH. Yes; we would certainly hope it would include funding for the women. It seems like the additional funds needed to register women, by the way, are really small compared to the total budget and the amount needed to register the men. So you are getting more bang for the buck if you include women. We are very cost effective.

Mr. MONTGOMERY. Thank you.

Mr. WHITE. Thank you very much. I would like to ask you this. Do you support women in combat? Is that part of your testimony?

Ms. SMITH. No; that wasn't in the testimony.

Mr. WHITE. What is your view?

Ms. SMITH. When I testified before you in November, I was saying that I thought there were a lot of issues which needed to be looked at in terms of women in combat. We don't have all of the answers right now. We don't know if women can serve in combat.

Mr. WHITE. You are not, at this time, prepared to say yes?

Ms. SMITH. At this time I am not prepared to say yes.

Mr. WHITE. Standby registration is for a provision for a reservoir of manpower to train for combat in the event of a mobilization.

Ms. SMITH. That is my understanding of one of the reasons, yes.

Mr. WHITE. That is the reason.

Ms. SMITH. They were talking about the need to support that as well.

Mr. WHITE. This committee won't consent to that.

Mr. Pirie said, yes, we need to displace some men, and when we asked him how many billets he was talking about, he said 19,000.

Should we draft 4 million women plus another million in January in order to fill 19,000 billets?

Ms. SMITH. I don't believe that the registration addresses those 19,000 billets. I could be wrong, but I don't think that is what they were saying.

Mr. WHITE. We also had a witness say that if they have to register and draft women that there is no place to train them in such a mobilization.

Ms. SMITH. The plans I have read indicate they are very likely to increase the buildings.

Mr. WHITE. But we need those for combat troops. So what I am saying is this, if we are really training, if we have the standby registration for combat purposes, this committee has got to make a decision on registration for combat purposes, not for symbolism, not for equity, not for sociological effect. What do you think the committee should do?

Ms. SMITH. I think the committee should include women in the registration once the reasons are given. I think you give the services a—I don't want to use the word broader—a larger group to select from.

Mr. WHITE. For combat? That is what we are talking about.

Ms. SMITH. For combat and all of the other positions.

Mr. WHITE. We are talking about combat. Women are volunteering very well, as you know.

Ms. SMITH. Yes, sir.

Mr. WHITE. And we haven't had any problem at all. In fact, if there is any bright light in the All-Volunteer Force it is the enlistment of women with good qualifications. In fact, they have been picking up the educational caliber of the All-Volunteer Force. There is no problem.

Ms. SMITH. As you expand the number of combat positions, you expand the need for combat support positions. It really takes seven to eight people for every combat job. As you increase the number in combat, you increase the need for combat support positions.

Mr. WHITE. As you know, most of the people who will be trained will be fill-ins for the spots vacated by casualties. So you are not sure you are expanding necessarily that much. This is to fill the combat roles necessary with the experiencing of heavy casualties. That makes a little difference, doesn't it?

Ms. SMITH. Yes.

Mr. WHITE. Thank you very much.

Ms. BROOKS. Might I say, I am wondering if I might act as a counterpoint to our first witness who had some reservations about her daughter and her son serving.

Mr. WHITE. Get closer to the microphone.

Ms. BROOKS. I am sorry. I would like to speak as a counterpoint to the first witness. I have three children. Besides being a veteran I am a mother. My son had reserve time but no extended active duty time. He was not interested in the military. My older daughter is not. But my younger daughter has a nomination for an appointment to West Point, and I would feel that under circumstances of a national emergency and national mobilization that both my husband and myself—and he is a retired Air Force colonel—would expect those children to offer their services to the country without even waiting to be drafted. I have no reservations. I cannot separate my son from my two daughters, and I have said that before this committee before.

Mr. WHITE. Well, that is commendable. There are families that have strong patriotic feelings and a sense of obligation, and, of course, the

women have been volunteering very well. But the problem we have now is registration. That has not precluded the possibility of registering women later. The question we have before us now is only registration of both males and females, and at this time a good number of them have volunteered, so maybe we need to register males only.

Ms. SMITH. Well, I still believe that the pool of people that you would be registering, both men and women, would certainly be worth the effort of registering women.

Mr. WHITE. Won't we have people demonstrate just because they feel that we haven't crossed that bridge necessarily, isn't that possible?

Ms. SMITH. I am sorry.

Mr. WHITE. All I am saying is that what you are doing is making a gesture that is never going to come to fruition because you are not going to put these women in combat or in combat roles, and so they are not going to be called up for training early in a mobilization. That is the whole point. It would be merely a gesture, and I question if this committee wants to make a gesture, for those who feel like there is some equity involved by making everybody go.

Ms. SMITH. Everybody that was called up in the registration and draft of the last large war did not go into combat.

Mr. WHITE. That is true, but our problem right now is combat replacements, because when we already had a draft that had been enacted and underway for at least a year before we got into the war. We don't have that at this time. That is the problem.

Thank you very much. Thank you both for your testimony.

I see coming into the chamber Bella Abzug. We have already had your testimony placed in the record as though delivered. You may proceed as you wish.

STATEMENT OF HON. BELLA ABZUG, PRESIDENT, WOMEN, U.S.A.

Ms. ABZUG. Thank you very much, Mr. Chairman. I am sorry that I am late, but our airlines have not improved any since I left the Congress between Washington and New York. I am an hour late, and I therefore appreciate the opportunity to come before you. I am appearing as president of Women, U.S.A., which you might be interested in knowing was founded by former Congresswomen Patsy Mink and Yvonne Braithwaite Burke, as well as Maggie Kuhn, head of the Gray Panthers, Gloria Steinem, editor of Ms. Magazine, and Brownie Ledbetter, a southern human rights activist, and we have now been presenting our views with respect to the issues that have been raised and that are being raised before this hearing at both press conferences and as previous testimony before the Congress and other committees that have been holding hearings.

Essentially our position is that this present debate about whether women should be drafted is essentially a diversion in this instance because the issue really in our opinion, whether or not anyone should be registered, male or female, and it is our conclusion that it would be unnecessary as well as inappropriate, that it fails to really do anything to increase our country's capabilities for self-defense.

It is not a great symbol of resolve to have computerized lists of young Americans to scare the Russians out of Afghanistan. Starting in the summer and next winter hardly appears to be an immediate

response, and therefore it is our deep concern that the real purpose, unilaterally adopted by the President of the United States, which we find very difficult, is, in our opinion, quite shocking that there should be this view that we are not engaged in bargaining and discussion as to what is the nature of our vital interests, prior to calling up women and men for an enormous sacrifice. I don't think the discussion as to what was our vital interest in the Persian Gulf was discussed either with the Congress of the United States, which I find particularly untenable not only as a former Member of Congress but as a person who takes the question of the process of arriving at decisionmaking rather important. I therefore have to come to the conclusion that this discussion of registration must be more serious than just registration, and that the President undoubtedly is looking at it as a prelude to a war since that seems to be so historical. But more than that, I find it particularly objectionable because all of the debates that I have followed and the reports before the Armed Services Committee of this Congress appear to indicate that any military action that might be contemplated in the Persian Gulf would have to be that of a limited nuclear or nuclear action, and I think that is unthinkable, and to talk about calling up either young women or young men in connection with a limited nuclear war is not thinkable and something that this country would fight were they really aware of the fact that this is what is being discussed and contemplated.

There has been a good deal of debate about registering women for the draft in connection with equal rights. It is very true that women in this country believe, and men in overwhelming majorities, that they should participate equally in all aspects of American life, that they have both the right and the obligation, and they are willing to assume those responsibilities.

I personally find it most ironic, even as I can accept that course of conduct and live by it and fight for it; namely, the course of conduct which says that women must have constitutional equality and political equality, but I find it most ironic, without our having secured that, without our having secured either constitutional equality or economic equality or securing the kind of support we should have to be involved in political decisionmaking of life and death that is now taking place in this country, that the President should call upon us first for this equality of sacrifice.

Now, we women are not looking for special privileges based on gender. If we have registration, as has been testified to by previous witnesses here, regardless of whether or not we have the equal rights amendment, then clearly both men and women should be and will be included, in my opinion, nor do I think that women have to prove that we are prepared to make those sacrifices because women have made sacrifices and have fought and died in every war our country has been engaged in. Nor do I think it is necessary for us to prove our patriotism or our dedication to equal rights by accepting this ill-advised draft registration proposal.

First and foremost, we insist on our right to debate and reject the premise that registration is necessary or desirable. Women, as well as men, have an equal right to refuse to be drafted, just as women have an equal right to volunteer for the armed services, if that is what they choose to do.

I, and many of you, of course, have been engaged in securing the opportunity for women to serve in the armed services, and we have witnessed an increase of young women into this system in which, however, they have met the same kind of discrimination that they have encountered as civilians, and we deplore the unequal treatment of women in the military, and would hope that would be remedied a lot more in the course of this discussion of where women should serve and what their capacities are and what they can do.

But we do not endorse the registration of women as the road to equality in the military, just as we do not endorse draft registration of men as the solution to male unemployment, and so, I believe, gentlemen, in answer to the issue before this hearing today that women should not be compelled to register for the draft, nor should men be compelled to register for the draft and would urge this subcommittee to reject the President's request for funds to register women, and oppose the President's request for funds to register men.

WRITTEN STATEMENT OF HON. BELLA ABZUG

I am pleased to appear before you today to testify on the issue of draft registration. I am presenting testimony on behalf of Women USA, which was founded by myself, former Congresswomen Patsy Mink and Yvonne Brathwaite Burke, Maggie Kuhn, head of Gray Panthers, Gloria Steinem, editor of Ms. Magazine, and Brownie Ledbetter, a southern human rights activist to provide educational information and action services to grassroots women throughout the country. On January 31, 1980 Women USA held a press conference to which we invited women leaders to join us in opposing compulsory draft registration for men and women. Among those who stated their opposition to draft registration for men and women alike were representatives of the National Organization for Women, the National Women's Political Caucus, the U.S. Student Association, Rural American Women, the Gray Panthers, the IWY Conference Continuing Committee, the National Congress of Neighborhood Women, the ACLU Women's Rights Project, the American Friends Service Committee, and the Women's International League for Peace and Freedom.

Women USA also recently testified on draft registration before the House Budget Subcommittee on National Security, and the House Appropriations Subcommittee on HUD-Independent Agencies.

Women USA believes that the attempt to distinguish women from men in the registration debate is a diversion; the issue of registering women is being used to steer attention away from the real debate. The question we should all be asking is not whether women should be registered, but whether anyone should be registered. Women USA's answer is an emphatic no.

Draft registration is an unnecessary gesture which will do nothing to increase our country's capability for self-defense. As Sen. Mark Hatfield (R-Ore) recently revealed, the Jan. 16 draft version of Selective Service's report to the President recommended against registering young people and maintained that "we now have a capability to respond in an emergency." The report described "pre-registration" as "redundant and unnecessary", noting that it would save only seven days over "post-mobilization" registering people after an emergency is called).

Mr. Carter has said that registration will "demonstrate our resolve as a nation." Computer lists of young Americans are hardly likely to scare the Russians out of Afghanistan; it would be much more productive to continue discussions on neutralizing Afghanistan through diplomatic means.

Any realistic discussion of draft registration must be based on the recognition that registration is a prelude to the draft, and the draft is a prelude to war. There has never been a time in our nation's history when we have had registration without also having a draft. Women have always led anti-war movements, and we are speaking out now against efforts to make another war thinkable and acceptable. As feminists, we reject the male establishment's war reflex as the solution to international problems and suggest that this is the time for serious and delicate diplomacy rather than threats of military force. We must never give up on peace.

The President's statement that women must register for the draft to show that they deserve equal rights is as specious as his whole registration ploy. Women are not looking for special privileges on the basis of gender; if we have registration, regardless of whether or not we have the ERA, then clearly both men and women should be included. Women have made sacrifices, fought and died in every war our country has been engaged in. It is insulting to suggest that we must prove our patriotism or our dedication to equal rights by blindly accepting this ill-advised draft registration proposal. We insist on our right to debate and reject the premise that registration is necessary or desirable. Women, as well as men, have an equal right to refuse to be drafted, just as women have an equal right to volunteer for the armed services, if that is what they choose to do.

It is ironic but typical that the President wants to force young women into a system in which they meet the same kind of discrimination they encounter as civilians. We deplore the unequal treatment of women in the military, and call on Congress to pass legislation removing quotas on women in the military. We also urge the military to undertake intensive sex discrimination training of its troops, similar to the race relations training employed when blacks began enlisting in large numbers. But we do not endorse draft registration of women as the road to equality in the military, just as we do not endorse draft registration of men as the solution to male unemployment.

Should the Congress and the President institute registration for men and not for women, it is inevitable that there will be a court challenge, and we believe that on the basis of previous court decisions, exclusion of women on the basis of gender will be found unconstitutional. We repeat our belief, however, that neither men nor women should be compelled to register for the draft.

In summary, Women USA urges the members of this Subcommittee to reject the President's request for funds to register women, and to oppose the President's request for funds to register men.

Mr. WHITE. Thank you very much.

Mr. Montgomery.

Mr. MONTGOMERY. Thank you, Mr. Chairman. I would like to welcome our former colleague back to the Congress. We appreciate very much your coming down from New York and testifying about this very emotional and important decision we have to make in this subcommittee. Actually, Bella, what is before us is whether women should actually be registered or not. By your testimony, you oppose women being registered.

Ms. ABZUG. That is correct. I oppose women and I oppose men being registered.

Mr. MONTGOMERY. That is not before us, just the women.

Ms. ABZUG. Then I am giving you some extra thoughts.

Mr. MONTGOMERY. You have always done that, OK.

Another thing, really I don't think anyone in this subcommittee or even in the full committee has contemplated or talked about the theater of nuclear war. I think we recognize the holocaust it would create and cause, and in fact we have talked to NATO Commander General Rogers about that, about the philosophy about the nuclear weapons, but that leads to another point. You have got to have some type of conventional forces, in my opinion, to lessen the likelihood of nuclear war in time of conflict. If you don't, then all we depend on is nuclear weapons, and we would end up in a nuclear war.

Ms. ABZUG. Right.

Mr. MONTGOMERY. Do you agree?

Ms. ABZUG. I have no dissent from that.

Mr. MONTGOMERY. In other words, you support what the committee is trying to do, to build up a conventional military force that would deter the use of nuclear weapons.

Ms. ABZUG. I have no objection to that. The real issue is what has this got to do with registering 32 million young people?

Mr. MONTGOMERY. Well, you brought it up. You mentioned the nuclear.

Ms. ABZUG. I certainly did bring it up. I want to bring it up as much as I can because I am very concerned about it, because, as I understand it, the Department of Defense, as well as others, have testified that the only kind of military response in the Persian Gulf would be through the use of limited nuclear tactical weapons. I don't think the American public realizes what the President has been projecting, and I am alarmed and I want to bring it up so that I make it clear that when you talk about registration or draft you are talking about it in connection with that potential and that, therefore, it is something that has to be rejected at the beginning before we get into something that will destroy millions of people.

Mr. MONTGOMERY. Before you go here this morning, the Director of Selective Service testified very strongly that we need peacetime registration, and he wouldn't give us a definite date, but he said, however, that the 7-day date in the statement issued by the White House when they were opposed to registration, held no water.

Ms. ABZUG. Oh, I see. It seems the administration is spending a lot of time in changing their decisions every day. We noticed that at the United Nations as well just yesterday, so, I mean, I really don't understand that.

Mr. MONTGOMERY. You don't understand that?

Ms. ABZUG. I realize that when one is in a political campaign, one can sort of try to change one's words to suit the political climate at the moment.

Mr. MONTGOMERY. But one more question—

Ms. ABZUG. And this administration is in a political campaign.

Mr. MONTGOMERY. I haven't been scarred too much, so I have one more question.

Ms. ABZUG. What I am saying, Mr. Congressman, is that I don't know, you know, how in less than a few weeks it can be determined that you save 17 days instead of 7. I really don't know the basis for that. I didn't hear Mr. Rostker's testimony this morning. I did read his report of just yesterday, you know, in general terms, which said it was only 7 days and to register before mobilizing a country was not cost effective, so that he now changes his testimony doesn't shock me because the President just changed his vote in the United Nations, which is a lot more, you know, public, although I can't deal with that at the moment except to suggest it is political.

Mr. MONTGOMERY. Let me ask you just one more question, and it really doesn't have to do with the decision the committee will make tomorrow about the registering of women or not. What concerns me is what is wrong with having registration? We need registration and mobilization, you would agree with that, when we have an emergency. We have to have registration. You agree with that?

Ms. ABZUG. If there is a need to mobilize the country in a real national emergency, we have to do everything we can to mobilize the country.

Mr. MONTGOMERY. That is the only way we can do it. What is wrong with having a peacetime registration if it would save 60 to 90 days

by knowing who these young people are and where they are. You can imagine—you have been there—the confusion and frustration if the President were to not only have to start registration but he would also have to start trying to draft someone when we were really having problems of the enemy moving in on our shores and moving on other places. My point is, I can't see why people object to halfway being prepared and getting the registration and getting people's names on the list in case we need them.

Ms. ABZUG. Because there is always a method to the madness, and essentially I think people are objecting because we feel that there are other agendas, and that to create the sense when there is no way in which we should be prepared to support a position of military response, which is nuclear in the Persian Gulf, to support an atmosphere for registration is to try to create some ideas as becoming thinkable which are really unthinkable, and it is always a first step to a draft, and I don't believe that we should mobilize the country now except to mobilize it against inflation. Mobilize the country to make us self-reliant for energy, so we wouldn't be hung up in the Persian Gulf and the problems of the necessary supplies that we need from the Persian Gulf.

I don't want us to be spending a lot of our time and energy in trying to create an atmosphere to get us ready for something which we should not ever be prepared to do, and that is why I object to it, among other things.

Having been a person, which you may recall, who was a very early opponent of the war in Vietnam and who objected to it at the time of the Gulf of Tonkin Resolution, which was way before I came to the Congress of the United States, I think about these things very deeply, and I would say to you that I wish at that time that more people were not brainwashed into thinking that they did have a vital interest in that Gulf of Tonkin when the facts turned out later we did not, and I think that the time now is to make clear that first steps like that lead ultimately to steps which should not be acceptable to this country, and therefore we have to object to it. And there is no need to mobilize in the wrong direction.

We should be mobilizing people in this country to fight for conservation, for example. There should be a posse to conserve energy to where we could probably reduce our problem and reliance upon the Persian Gulf very considerably. We hear nothing like that.

This administration should be dealing with the lives of people which are being smashed by 20 percent increase in the inflation and 17½ percent interest rate and build into the budget 2 million or 1½ million jobs being lost where women and minorities will be the first to lose their jobs. That is what I am interested in.

I don't like to emphasize the direction the country is going in, and as a citizen and as a former Member of Congress I take very seriously the fact that I have to respond and make clear to the American people that this registration thing is something they have to be afraid of. That is the first step toward something which is not in their interests and the country's vital interests are not really at stake in the Persian Gulf. That is why I object to it.

Mr. MONTGOMERY. Thank you.

Mr. WHITE. Thank you, Mr. Montgomery.

Ms. ABZUG, in trying to understand your perceptions here, in the first place, you understand before a draft could be instituted, a separate act of Congress would be required.

Ms. ABZUG. Yes.

Mr. WHITE. You know that?

Ms. ABZUG. Yes.

Mr. WHITE. And then going to the question of registration, I know it is a subject that you have had some dealings with and some understanding. Do you think that Israel was wrong and is wrong to register young people in their country?

Ms. ABZUG. No; they are in a constant state of combat. They are in a constant state of threat. Witness the fact that they have been in a constant state of combat, I don't think we are in that condition.

Mr. WHITE. Do you think they are wrong to conscript?

Ms. ABZUG. Well, I have never been a proponent of compulsory conscription, no. I think it is not in the tradition of this country to keep people on. But they are in a constant state of attack. We are not under those conditions. You maybe want to create that sense but it is not true.

Mr. WHITE. So the question then?

Ms. ABZUG. We have never had trouble, Mr. Chairman, calling up people when we needed to.

Mr. WHITE. Let me ask you about perceptions. Your answers are predicated upon your perception of the threat?

Ms. ABZUG. Yes; that is correct.

Mr. WHITE. All right. Now, let's go from that point. Do you subscribe to the theory that a country is more likely to be attacked if that country is strong than if that country is weak?

Ms. ABZUG. Mr. White—

Mr. WHITE. Just yes or no and then you can explain.

Ms. ABZUG. I think a perception of this country is that it is strong.

Mr. WHITE. I am asking, do you think a country is less likely to be attacked if it has conscription?

Ms. ABZUG. I don't know, if we continue to give nuclear weapons to countries or capability like Pakistan or so forth, we might be attacked because of the crazy dictator at the head of that country.

Mr. WHITE. Do you feel a country is less likely to be attacked if it has an aura or image of strength or if it is weak?

Ms. ABZUG. I have suggested that registration gives no aura of strength or weakness, Mr. White.

Mr. WHITE. Is your answer yes to the question?

Ms. ABZUG. I think if you appear strong, it is less likely. I think that this does nothing to add to the appearance of being strong.

Mr. WHITE. Let's go on from that point. You know, you spoke about nuclear attack. Do we really know at this time whether the threat is going to be intimidation by a nuclear attack or conventional means; do we really know that?

Ms. ABZUG. That? What? Do we know that about what, sir?

Mr. WHITE. What the threat or the assault against our country could be. Do we know at this time whether it would be conventional or nuclear or intrusion into this country? We don't know that, do we? So this committee which has the charge of the defense of this Nation has to be prepared for any conditions, wouldn't that be our charge?

Ms. ABZUG. Absolutely.

Mr. WHITE. Now, do you think that women should be in combat?

Ms. ABZUG. I think that the question of who should be in combat should not be determined by gender, but it is a question of capability.

Mr. WHITE. So, in other words, you feel that a capable woman should be able to go into combat?

Ms. ABZUG. There have been many tests, as I understand it, that have been conducted, which show, for example, some women can—well, I mean there have been two areas of test by the Army itself, and by the Brookings Institute, which show that under certain conditions women do as well as men. Some women can lift 80 pounds and 6-foot-tall objects. According to a study in the Air Force 25 percent of them could. Some women can't and some men can't. I think the issue is not one of gender. I think the issue is the nature of the present day warfare. We tend to talk about combat in terms of yesterday's experiences or yesterday's military or yesterday's technology or mechanization. So I think that—I am not the expert and I want you to understand that—I don't believe that I am, but I realize that in combat if there was such a regrettable thing today, that in combat there are many different functions that would be considered combat functions but would be technological and mechanical and so on. Clearly, the determination as to the role that anyone plays in the Armed Services, including combat, would be their capacity, their capability, as well as some judgments about their dependence and so on and so forth.

Mr. WHITE. Let's go to the point of this perception of a threat, which is what you predicate your position on. You say Israel has the constant threat, and therefore registration and conscription is perfectly valid for their position?

Ms. ABZUG. Yes.

Mr. WHITE. Now, if you had the decision in this country and you were faced with this problem, you have an All-Volunteer Force which is limping along not doing as well as you like, you are up to 500,000 short in the Individual Ready Reserves, 130,000 short in the National Guard Reserves, your Selective Service System is in shambles, and you have no machinery by which you could mobilize, where you could save, in realistic terms, 2 or 3 months mobilization time if you had standby registration of young males for combat roles, or young males and women for combat roles, and you have a country that has just invaded Afghanistan, and that same country has got troops in Cuba with tanks, about four times more than we have, with artillery and a capacity that is astronomical as compared to all of our allies put together, and you have the threat against our oil supplies in the Middle East, and danger of instability in the Middle East—would you regard that as a threat to this Nation that should be anticipated, as the one who is making the decision for the security of this country?

Ms. ABZUG. Well, obviously, I disagree with a lot of your premises, OK. First of all, you have given me some facts.

Mr. WHITE. I am assuming those facts.

Ms. ABZUG. As I said, Mr. Rostker testified that the difference is between 7 and 17 days, not months. So that is No. 1.

Mr. WHITE. They have just disavowed—they are stuck in that craw, but they have disavowed those figures.

Ms. ABZUG. They have, but it is a question of credibility.

Mr. WHITE. I was saying, accept those facts for the purposes of my hypothetical.

Ms. ABZUG. As I understand your problem in the Armed Services Committee—and I am very sympathetic to your problems—you have a problem about midcareer retention, you have the question about the Individual Ready Reserves, and those questions which have really very little to do with registering 32 million people. You have those problems, and you should deal with those problems, and I am sure you are in the Armed Services Committee, that is No. 1. In other words, you are not going to get midcareer people by bringing in young sons and daughters. You are not going to have any increase in your Individual Ready Reserve by bringing in the young 18 and 19 year-olds this year and our 20 year-olds next year, and furthermore you are not going to get any readiness or greater preparedness from them because they are raw inductees at the point where they will be inducted. So that doesn't solve your problem, no. That is not what I would do is the answer.

No. 2, I really believe that there are lots of facts in the present situation, which are a little different than your assumption, and I am not prepared to mobilize the country and create this compulsory situation in the face of that.

Mr. WHITE. Well, Mrs. Abzug, if your premise—and I accept what you are saying—

Ms. ABZUG. I am not the President of the United States. I would have been engaged a lot more deeply in trying to figure out how we could have that moral equivalent of war campaign that would make ourselves reliant in industry, and I would be very much more involved in negotiations with Afghanistan, and if there is any truth to the fact that all of our allies want to find a way in which we can neutralize that area, that we do everything we could on our part, in addition to writing a letter, which the President didn't, to help neutralize it. If there is any truth that we are encouraging troops to go in there on the other side, I would try to see that changed. In other words, try to have a diplomatic response like the kind of response we conducted in the United Nations, where we got all of the countries, even some of the former allies of the Soviet Union, to condemn the Soviet Union, and it has had a salutary effect, and I would continue to fight for that negotiation at this time because this tactical nuclear war is unthinkable, and in addition to which I have this question of you, Mr. White.

When I left the Congress, we had just put in the All-Volunteer Army, and I noticed there was much discussion in the last year or so about the effectiveness of the Volunteer Army and why should we now be talking about conscription?

Mr. WHITE. We are talking about registration, Ms. Abzug. I will tell you why we are concerned. There were many of the members of the committee that went along with the All-Volunteer Force concept because at that time the American public wanted to get rid of what was an inequitable draft system. But we went on faith, but the truth has shown—sociological evidence, and in fact there are policy reports—that an All-Volunteer Force has some real problems because, if I may name a few, and you yourself talk about minority positions most of your career.

Ms. ABZUG. Yes.

Mr. WHITE. The All-Volunteer Force today has an imbalance of representation sociologically of the ethnic groups of this Nation. If we get into combat, we are going to have heavy casualties in the poor and minority groups, and you will be the first to scream yourself about that.

Ms. ABZUG. We should be the first to address ourselves to that subject, Mr. White.

Mr. WHITE. Yes.

Ms. ABZUG. We should find a way to call on the patriotic spirit of the young people who want to be registered and there are some, and we should find the ways in which we create a more equal Army for minorities and women. I understand it costs much less to recruit women, and they are very anxious to be part of this Volunteer Army if they can go into all of the categories they are now excluding from and be able to be involved in the decisionmaking. I think we could improve the nature of that Volunteer Army, and I think, if I may finish, Mr. Chairman, and I think it would be very helpful that we use this moment to analyze how to do that, how to improve that, because when you have conscription and when you have registration, you are not going to eliminate some of the other serious defects of that. You are going to force people to come into an Army or into a draft which also forces people to work on levels that tend to end up with some of the less advantaged people.

Mr. WHITE. Ms. Abzug.

Ms. ABZUG. You are not going to do anything about changing that in your draft.

Mr. WHITE. We are on registration. Let's go back. In the first place, what would the definition be in the Israeli Government of the obligation of the citizens of Israel, and if there is such a euphoria of support for a Government that is under an obvious need, then why have they gone to a draft, not only registration but a draft, when they can see the enemy right there on their heights? What is the definition, would you say, of an obligation of a citizen of this country or Israel or any country toward the nation?

Ms. ABZUG. The obligation of a citizen is to be prepared to respond in the national interests of the country as well as in the interests of the citizen of this country.

Mr. WHITE. Preparedness is the answer. That is why we are talking about pre-mobilization, to be prepared.

Ms. ABZUG. I don't agree with you at all. I think it is a phony, Mr. White. Let's just get right down to it. You may have an obligation to say that as being our chairman of the Armed Forces Committee, but registration, I don't care whether it takes 7 days or 17 days, unrelated to mobilization in the event of a real crisis, the President has called this a crisis without having the responsibility of ignoring the rights of Congress to discuss it. He has declared this to be an emergency and has declared this to be in our vital interests. The country has not agreed with that as yet.

Mr. WHITE. Oh, but they do, indeed.

Ms. ABZUG. It was done unilaterally. I am surprised that you don't object to that, Mr. White, as a Member of Congress. Don't you object to the fact that there was no prior discussion with you?

Mr. WHITE. The danger was well recognized. We had discussions. The danger was well recognized by the American public.

Ms. ABZUG. The President may be the Commander in Chief of the Army, but he doesn't have the power to declare war. The Congress has that power. I, as a citizen of the country, resent the fact that the President declared the Persian Gulf was an area of our vital interest, without prior discussion and consultation of the Congress.

I think much of what he does is political, and I think the American public is at the same time being deprived of an opportunity to debate with him as he refuses to come out and debate and he runs for office.

Mr. WHITE. What we do in the committee is not political. We are very much concerned about it.

Thank you for your testimony. You are always interesting and challenging.

Ms. ABZUG. Thank you, Mr. White.

Mr. WHITE. We have a few minutes left. We can complete one more witness. One group of witnesses is going to come in this afternoon. So I will ask Rabbi Herman N. Neuberger, who is present and would like to testify at this time.

Is your testimony lengthy, sir?

Rabbi NEUBERGER. No; about 5 minutes.

Mr. WHITE. We appreciate your coming.

STATEMENT OF RABBI HERMAN N. NEUBERGER, CHAIRMAN, ORTHODOX JEWISH COALITION ON REGISTRATION OF WOMEN FOR THE SELECTIVE SERVICE SYSTEM

Rabbi NEUBERGER. Thank you, Mr. Chairman and members of the committee.

I am Rabbi Herman Neuberger, vice-president of Ner Israel Rabbinical College in Baltimore, appearing as chairman of the Orthodox Jewish Coalition on Registration of Women for the Selective Service System, comprised of the following national organizations: Agudath Israel of American, Central Conference of Orthodox Rabbis, Mosdos Bobov, National Council of Young Israel, National Jewish Commission on Law and Public Affairs (COLPA), National Society for Hebrew Days Schools, Poalei Agudath Israel, Rabbinical Alliance of American, Rabbinical Council of America, Religious Zionists of America, Union of Orthodox Jewish Congregation of America (UOJCA), Union of Orthodox Rabbis of the United States and Canada; United Lubavitch Organization, and the United Satmer Community.

This coalition represents the entire spectrum of Orthodox Jewry in America, comprising over a million people who share the profoundest appreciation of our Nation's democratic principles, which have enabled us to thrive culturally and spiritually. This committee is certainly aware of the tragic history of the Jewish people, for whom religious persecution was commonplace. This history of persecution enables us to appreciate the blessings of America all the more.

We have joined together for one common purpose; to voice our strong opposition to a national registration of women for the Selec-

tive Service System, as Americans, as people concerned for the family unit in America, and especially because of our binding religious requirements.

As Americans we are deeply concerned with our national security. Without question a current tense world atmosphere demands a state of readiness and may well require a state of military readiness. But we cannot, under any circumstances, accept the registration of women as part of a response to Soviet aggression nor as a means of bolstering our state of readiness.

The registration of women in no way relates to the current concern with the worldwide perception of combat readiness of our Armed Forces. Moreover, the debate on this issue compromises the goal of national unity and blunts any message to the Soviet Union.

Furthermore, we believe that the inclusion of women in the Selective Service System would irreparably subvert the family unit in America, which is already battered and in grave danger.

The American family, with the woman as its stabilizing element, would suffer a severe disruption. Registration of women would engender a rootlessness in American society which can cause a more radical change than would an invading army.

As noted, while our community shares with other segments of society a deep concern over the registration of women as Americans and as people concerned for our society, we in the Orthodox Jewish community have a far more compelling reason for opposing registration of women. Our highest rabbinic authorities have ruled that Jewish law prohibits Jewish women from responding to any form of conscription. To require such a response would place Jewish women in an irreconcilable and unprecedented conflict between the requirements of their faith and the law of the land. This conflict is unprecedented in our Nation's history. It is also altogether unnecessary.

In summary, the issue of registration is of utmost concern to us, as it is to millions of other Americans, because it touches on moral concepts. To include women in a registration or a draft would deal a severe blow to the traditional concept of the American family and would present to one of the Nation's most law-abiding groups an impossible dilemma. We appeal to you to refrain from including women in a new national registration for selective service.

Mr. WHITE. Thank you very much, Rabbi, and I have to agree with you, you know, but I am asking out of curiosity one matter. Are women in the Israeli draft as well, or are they on a volunteer basis?

Rabbi NEUBERGER. Women in Israel are drafted. However, as the Israeli Embassy gave the figure, they comprise 10 percent of the armed services, they are not used for combat, and they have a religious exemption. Any girl who claims that her religious conviction prohibits her from registering is not required to register.

Mr. WHITE. That is not quite a conscientious objector.

Rabbi NEUBERGER. It is somewhat different than a conscientious objector. It is simply that these girls and the girls in our society, we do not want to expose them to military life where her standard and the standards which these families are used to are most difficult to maintain.

Mr. WHITE. So in a sense then they are quasi-volunteering?

Rabbi NEUBERGER. Pardon me?

Mr. WHITE. They are in a sense quasi-volunteering in Israel?

Rabbi NEUBERGER. Right.

Mr. WINCUP. Rabbi, I have a question. Do I understand from your statement that it might become a matter of religious conscience for women not to register?

Rabbi NEUBERGER. Very much so.

Mr. WINCUP. To register itself?

Rabbi NEUBERGER. The registration is a prelude to a draft. You are not spending millions of dollars simply to have them on the books, and the purpose for registering is to have an eventual draft. Otherwise, in an emergency, you would not go to the expense of registering.

Mr. WINCUP. So it might be that on religious grounds Jewish women would not be permitted to register?

Rabbi NEUBERGER. Very much so.

Mr. WINCUP. Thank you.

Mr. WHITE. Thank you, Rabbi. We appreciate your coming before us, and you have given us a different angle.

Rabbi NEUBERGER. Thank you.

Mr. WHITE. You may be interested to know that we had earlier a witness from the Carl Menninger Clinic, who was a psychiatrist himself, who based his testimony on similar grounds as yours and also went into the psychological impact on women if they should get into a combat position.

Rabbi NEUBERGER. Thank you.

Mr. WHITE. Thank you very much.

At this time the committee will recess until 2 o'clock when we resume hearings in this same room.

[Whereupon, at 12:30 p.m., a recess was taken until 2 p.m. of the same day.]

AFTERNOON SESSION

Mr. WHITE. The subcommittee will come to order.

The next witness is Ms. Kathleen Teague, representing Mrs. Phyllis Schlafly, of the Coalition Against Drafting Women.

She is not present at this time.

All right. The next witness will be Ms. Judy Goldsmith, vice president-executive, National Organization for Women.

Your statement looks rather large. Would you want to summarize your statement?

Ms. GOLDSMITH. I certainly do, Mr. Chairman.

Mr. WHITE. Without objection then your entire statement will be placed in the record as though read.

You may proceed.

STATEMENT OF MS. JUDY GOLDSMITH, VICE PRESIDENT- EXECUTIVE, NATIONAL ORGANIZATION FOR WOMEN

Ms. GOLDSMITH. I have a 5-minute condensation of the 25-page paper, which appears in front of you. The paper itself involved considerable study because this is an issue that we think is critical not just to women but to the Nation.

I am pleased to have the opportunity to appear before you today to address the question of reinstatement of registration. As vice president-executive of the National Organization for Women, the largest national organization dedicated to the eradication of sex discrimination, I am representing over 100,000 women and men in this country who are committed to equality for women.

The National Organization for Women opposes a reinstatement of the draft, and since registration serves no other purpose than as a preparation for a draft, we are also saying that we oppose the draft. We oppose it for both men and women. We have a volunteer armed service in place, which is working and which could work even better if present discriminatory practices were eliminated which prevent full utilization of those women who are already in the military and those who seek a career within it.

If the objective is really to increase the number of people capable of being mobilized in a short period of time and to improve the quality of the national defense, the easiest way to accomplish that without increasing the war atmosphere in the world and without involuntarily disrupting the lives of young people is to remove those discriminatory restrictions. Without those restrictions, without those practices, women recruits would be in far greater supply and of a higher caliber than additional male recruits.

Under existing practices, female numbers are depressed to a current 8 percent of the Armed Forces. The current discriminatory practices are also based upon outmoded concepts of both women's role and combat. If a draft and registration are instituted, NOW believes they must include women. As a matter of fairness and equity no draft that excludes one-half of the population of 1980 simply on the basis of gender couldn't be determined fair. It would also ignore the outstanding record of women in military service.

Women recruits are performing well. They have a higher educational level than their male counterparts. They do better on military retention, their retention rates are higher, and they lose less time from duty than men. They present less disciplinary problems.

Women have served in combat situations. During World War II, 200,000 women served under hostile fire. They received Purple Hearts and were taken as prisoners of war. They served in Korea and in Vietnam.

Playing the language of classifying a lady nurse as noncombatant does not change the fact they are in combat. Moreover, they serve at greater risk to themselves because they have not had adequate combat training. In tests of combat effectiveness done by the military, women have performed as well as men and sometimes better.

Lest you think when we are saying this we are glorifying combat, we want neither our young men or women exposed to combat. We tell you women are effective in combat because it is so widely and erroneously believed to be untrue, and because that supposed inability is the basis of the sex discrimination restrictions that limit women in the military, and indeed throughout society.

Those who oppose the registration and draft for females say that they seek to protect women, but omission from the registration and draft ultimately deprives women of their right to first-class citizen-

ship. Discrimination against women in the military depresses career paths and benefits for women.

The military provides thousands of job training programs and educational opportunities which are, for the most part, presently closed to women.

Military pay, which is on the average some 40 percent higher than female civilian pay, could be the only way out of poverty for countless young women. Discrimination against women in the military also costs this Nation literally billions of dollars per year. The Army, for example, spends \$3,700 to recruit a high quality male while the cost of recruiting a high quality female is \$150.

Under the present discriminatory system, women are at a considerable disadvantage in the military. Nevertheless, they will be increasingly called upon to serve. Why? Because they are needed, because the pool of available young men will decline 25 percent in the next dozen years, because women today are an essential part of the Nation's work force and are a key part of the trained and trainable technological pool of young people required to operate a moderate military.

In closing, let me reiterate and emphasize that our goal is not to see women in combat, it is not to see men in combat. In particular, we strongly oppose either of them being compelled to serve through a draft. However, this Nation must recognize and realize, in the past we have deluded ourselves that women were protected from the ugliness of war. They were not. They have served, they do serve, and as each day passes the likelihood of their serving in every capacity as volunteers or as draftees increases. Reality has ended the debate about whether women will serve in the military, they must, but at what cost to themselves.

Thank you.

WRITTEN STATEMENT OF MS. JUDY GOLDSMITH

I am pleased to appear before you today to address the question of reinstatement of registration. As Vice President-Executive of the National Organization for Women (NOW), the largest national organization dedicated to the eradication of sex discrimination, I am representing over 100,000 women and men in this country who are committed to equality for women.

The drive to reinstate compulsory registration of young people and to ultimately reinstate the draft was begun almost immediately after the draft was ended and the All-Volunteer Force (AVF) was created in 1973 (registration of young American males ended in 1976). Four reasons generally appear in arguments to reinstate the draft: (1) It would be required in the case of a major war; (2) the declining youth population will create serious problems in meeting personnel requirements; (3) should a national youth training and work program be instituted, military service would be part of the program; and (4) considerable savings in costs could be realized. Underneath the surface of these arguments are the racist and sexist attitudes which pervade our society, coupled with undisguised economic exploitation.

A fear frequently expressed is that the army is rapidly becoming a black man's army--34% of Army recruits in 1978 were black--with the unstated racist views that blacks are inferior "raw material" and therefore inferior soldiers. Hand-in-glove with these racist attitudes are the sexist attitudes towards women in the military. Female participation in the military has increased dramatically under the AVF to a projected 13% of the active forces in 1983. Women constituted less than 1% if the draft army.

Poverty has always been one of the features of military life, especially in the lower ranks. This situation has been somewhat mitigated in the AVF by the pay increases required to attract volunteers with the result that personnel costs, in the view of some, have made serious dents in funds available for hardware. A return to the draft is viewed, again by some, as the easiest way to reverse this trend.

Myths about the All-Volunteer Force are abundant. Contrary to myth, the active forces of the AVF have been within 1.5% of the congressionally authorized limits since 1974. The AVF has superior mental ability, is better educated, has less discipline problems, and has proportionally the same number of people from the lower economic levels, but a higher percentage of minorities, compared to the old conscripted service of the Vietnam War period. The Department of Defense itself in a December 1978 report stated in unequivocal terms that the AVF was superior to the drafted force.

Why then the need to register? We are told it will show the USSR that we mean business, and that it will increase our ability to mobilize. Actually, registration saves only a few days. And although it sounds strong to Americans who want to show that we are serious, in reality it proves nothing to the USSR which appreciates fully how little names on a list actually mean.

NOW is against the registration of young people precisely because it is a response which stimulates an environment of preparation for war. Too many of us still remember the senseless killing and destruction in Vietnam--which we also protested--and believe that violence is the "ultimate solution" taught most typically to males in our society. We reject that solution, and believe that too many are willing to wage war with others' lives. National defense and self defense is one thing; aggression for economic self-interest is quite another. To fight a war for oil is to deny that the inherent rights of all human beings must take precedence over the economic self-interest of a very few. We are committed to working for the day when our nation and our world priorities will be people--a day when our domestic problems are not solved by military aggression.

If the objective is really to increase the number of people capable of being mobilized in a short period of time and to improve the quality of the national defense, the easiest way to accomplish this without increasing the war atmosphere in the world and without involuntarily disrupting the lives of young people is to remove the sex discriminatory restrictions on women in the military. Without these discriminatory practices, women recruits would be in far greater supply and of a higher caliber than additional male recruits. Under existing practices, female numbers are depressed to a current 8% of the armed forces (programmed to increase to about 13% by 1983). The current discriminatory practices are based upon outmoded concepts of both women's role and combat. Today's military is highly technological. The military is more in need of brains than brawn. Moreover, physiological limitations go both ways: a small, agile person is more advantageous than a large, heavy person in many situations.

What is the impact of sex discrimination on women in the current military? Women are given fewer educational, training and advancement opportunities than men in the largest single vocational training institution in our country, the military. Approximately 83% of enlisted women are in the four lowest pay grades as compared to 68% of men. The four highest pay grades hold 23% of enlisted men and only 3% of enlisted women. Officer training programs and many specialties are closed to women except in token numbers. Using even the most inclusive measures, 75% of the positions in the military are unavailable to women because they are defined as combat-related or because they are reserved to provide rotational and career progression slots for men.

What would be the impact on women and the nation if women were excluded from the registration or ultimately from a draft? Currently, more women are capable and willing to serve than are recruited. Many more will be turned away to the detriment of women and the military if the limited progress toward equality in the armed forces is halted. Female numbers in the military would decrease or be held to current projections. During the last draft, women were held to 2% of the armed services. A signal would be sent to the armed services that women do not have to be treated equally. Women serving in combat areas would simply be classified once again as non-combatants or civilians and asked to serve for fewer benefits and lesser training, as was done in the past.

Women have always served. The question is whether they will serve equally or at greater risk to themselves. In modern warfare, the front line and combat zone are difficult to determine. People behind the so-called front lines are nevertheless serving at great risk. Women are serving at even greater risk because they have less combat training.

The modern military depends upon a high degree of technology. Not only in the modern civilian labor force do women fill many of the technically trained positions, but also in the current military. Women are simply necessary and the need for women is increasing as the supply of men decreases and the need for highly qualified and trained or trainable people increases.

The current debate over foxholes in Korea and the trenches of World War I is as obsolete to warfare in 1980 as the structured lines of the British Redcoats in the American wilderness. Warfare has changed and so has the position of women in education, training and the labor force.

We will serve. We will serve, for one reason, because the military has difficulty attracting sufficient numbers of people who are educated and technically trainable. One half of the pool of talented and trained youth of our country is women. Moreover, many personnel categories required by the modern armed services--clerical workers, keypunch operators, computer specialists, communications experts, administrative personnel--are more readily found already trained in the female population. If there is a true national emergency we will serve and we will do so in all capacities. The myth that we are not needed and not first class citizens must end right now.

Those who oppose the registration and draft for females say they seek to protect women. But omission from the registration and draft ultimately robs women of the right to first class citizenship and paves the way to underpaying women all the remaining days of our lives. Moreover, because men exclude women here, they justify excluding women from the decision-making of our nation.

When the word "protection" is used, we know it costs women a great deal. In this case, it fortifies a pattern of sex discrimination in our nation which manifests itself in many ways. One rape occurs every eight minutes. One out of every four American married women is a victim of wife beating. Eight out of ten murder victims in the United States are female. Women earn 59¢ for every \$1 a man earns in the same 40 hour week. The 13 million American women 65 years of age and over have an average income of less than \$3000 a year.

Do women know violence? Yes: women are the most frequent victims of violence. We must not forget that the great wars in Europe have visited far greater hardship upon the civilian population, largely untrained and unprotected women and children, than upon the military forces of the combatants.

Do women know hardships? Yes: the cost of discrimination to women is too dear -- we pay with our lives.

War is senseless. Neither the lives of young men nor young women should be wasted. But if we cannot stop the killing, we know we cannot

choose between our sons or daughters. The choice robs women as well as men. In the long and short run, it injures us all.

II. The Current Role of Women in the Military

BACKGROUND

- | | | |
|--------------|----|--|
| WORLD WAR II | -- | 350,000 women served in many traditional roles and in non-traditional roles as pilots, truck-drivers, airplane mechanics, gunnery instructors, air traffic controllers, naval air navigators, etc. |
| 1948 - 1967 | -- | Women were limited by law to 2% of the total enlisted services. Women officers were limited by law to 10% of total enlisted women. |
| 1968 - 1972 | -- | As the result of military regulations severely restricting the positions available to them, women remained less than 2% of the armed services. |
| 1973 - 1980 | -- | The draft terminated and the All-Volunteer Force was established. The armed forces began to increasingly utilize women as a factor in making the All-Volunteer Force work. The number of women increased from 2% to approximately 8% of the total armed services today. Despite these increases, women continue to be restricted by law, regulations, practices and policies to a small fraction of the military. The restrictions are based largely on the exclusion of women from jobs defined as combat-related and the reservation of numerous slots for men for career progression and rotation purposes. |

PRESENT STATUS OF WOMEN IN THE MILITARY

QUANTITY AND DIVERSITY

Women comprise approximately 8% of the total armed services. Women are projected by the Department of Defense to be 13% of the armed services by 1983.

Increased participation for women in the military has also meant increased participation for minority women although the only group of minority women currently fairly well represented is black women who comprise 19% of total enlisted women. Hispanic women are a little more than 3% of enlisted women and Native American and Asian American women are less than 2%. The restricted number of women officers and the token number of women promoted to truly significant rank is especially apparent when it comes to minority women who have not even reached the level of tokenism.

Women recruits are performing well in diverse military occupational groups including electrical equipment repair, communications and intelligence, other technical, administrative and clerical, crafts, service and supply, and medical and dental

QUALITY:

HIGHER EDUCATIONAL LEVEL

With the growing complexity of the modern technological military, high school completion is the best single measure of potential to succeed in the armed services, according to the Department of Defense. A significantly greater percentage of women recruits have high school diplomas.

% Recruits H.S. Grads	1971	1972	1973	1974	1975	1976	1977	1978
Female	93.9	94.4	95.2	91.7	90.6	91.1	NOT	91.0
Male	68.3	66.8	66.5	58.1	62.5	66.7	AVAIL.	75.0

HIGHER MILITARY ENTRANCE EXAMINATION SCORES

Women recruits score on the average 10 POINTS HIGHER on entrance tests.

EQUAL OR HIGHER PROMOTION RATE

Women are being promoted at the same or higher rates than men in all military occupations open to women.

EQUAL OR BETTER PERFORMANCE AT MILITARY SERVICE ACADEMIES

Women have been admitted to the Army, Navy and Air Force Academies since 1976. In this year's first graduating classes with women, the women's performance has equalled and often surpassed that of their male counterparts.

FEWER DISCIPLINARY PROBLEMS

The average woman recruit is much less likely than a male recruit to become a discipline problem. Women lose far less time than men for absence without leave, desertion, alcoholism and drug abuse.

PHYSIOLOGICAL DIFFERENCES:

On the average, American men are taller, heavier and stronger than American women. This fact is cited as proof that men should dominate the military and be the only ones in combat roles. This unwarranted assumption ignores four major points:

1. SIZE IS NOT ALWAYS A FACTOR

Technological advances continue to diminish the importance of brute strength. The "person who pushes the button" may be in a combat role, but does not require extraordinary strength to carry out her/his duties.

Even many of the "traditional" combat roles, such as those in the Air Force and Navy, do not now and never have required the brute strength allegedly associated with combat.

If the truth be known, in most close combat a gun is the great equalizer. And our experience in ground combat with Asian men (who are on the average smaller than American women) in Korea and Vietnam demonstrated that smaller men can be the victor because of skill or training.

2. SIZE CAN BE A FACTOR -- A PLUS FOR WOMEN

There is no reason behind the blanket assumption that "bigger is always better" in the military arena. The proliferation of advanced equipment installed in planes, ships, tanks and other land vehicles is turning "elbow room" into a scarce commodity. A soldier with a smaller physique becomes a valuable asset in these situations. In many cases, it is the small, lithe and agile soldier who can do the job more proficiently, escape the space more easily, and better fit the needs of today's (and tomorrow's) armed forces.

3. WEAPONRY AND EQUIPMENT CAN BE ADAPTED TO FIT THE NEEDS OF THE AVERAGE FEMALE SOLDIER

Our military has already faced similar needs in adapting U.S. military equipment for use by allied forces whose average sized male is smaller than the average American male. American industry has made great strides in adapting equipment

and clothing originally designed for use by men in the construction and telecommunications fields to fit the needs of the highly productive female worker in non-traditional occupations.

4. FINALLY, THE FACT THAT THE AVERAGE MAN IS STRONGER THAN THE AVERAGE WOMAN DOES NOT MEAN THAT ALL MEN ARE STRONGER THAN ALL WOMEN

First, it has been proven that the differences narrow or disappear when women receive adequate training. And, more significantly, no one disputes that some women are stronger than some men. Assigning jobs by gender instead of by ability simply does not make sense. What it does make is a less qualified military. If the armed services are to operate to their fullest capacity, they must classify people by their ability to do the job -- not by their gender.

COMBAT EFFECTIVENESS

The first myth to be dispelled is that women have not been in combat. According to the Women's Equity Action League Educational and Legal Defense Fund:

"During World War II, 200,000 military women in the Army, Navy, Marine Corps and Coast Guard served as nurses, mechanics, truck drivers, parachute riggers, typists, radio operators, technicians and air traffic controllers. They performed bravely and competently under hostile fire.

American military women landed on the beaches at Normandy, France as part of the 'D-Day' allies invasion. Army women travelled with the Fifth Army close to the front lines during the invasion of Italy. Army women also served in the South Pacific and North Africa. They received many military decorations for bravery, including the Purple Heart--awarded to those wounded by enemy fire.

Nearly 100 Army and Navy nurses were prisoners of war for three years in the Philippines during World War II.

Over 7,000 women served their country in Southeast Asia during the Vietnam War and received combat pay. Some of these military women died as a result of enemy action."

Women have served and will continue to serve in combat environments under the same conditions, suffering the same risks and the same injuries as men. Playing the language game of classifying an army nurse or a Women's Air Service Pilot as noncombatant does not change the fact that they are in combat. The reality is that women have served and died for their country and will continue to do so. The question is whether they will do so with the same training, benefits and salary as men.

In contrast to emotionalism and unsubstantiated generalities, many tests have been done by the armed forces in the late 1970s to assess the capabilities of women in combat roles:

WOMEN CONTENT IN UNITS FORCE DEVELOPMENT TEST (MAX WAC)

Purpose: To test the effect of placing women in combat support and combat service support units

Exercise: 72 hours under normal field conditions

Results: The performance of men and women with no prior civilian experience and equal military training was equal.

The units' effectiveness was not impaired by presence of up to 35% women soldiers.

NOTE: 35% was the maximum tested in this particular exercise; there is no evidence it is the actual "maximum."

REFORGER EXERCISES (Return of Forces to Germany Exercise)

- Purpose: To test the performance of enlisted women in extended field situations
- Exercise: A 30 day field exercise involving 14 weeks of war games in Germany. Ten percent of the combat support and combat service support units were comprised of women.
- Results: Women's skills were as good or better than the males
 Women had the stamina and endurance to maintain performance standards in the field equal to those of men
 Women were highly proficient
 Women were highly motivated

NAVY U.S.S. SANCTUARY

- Purpose: To test the effectiveness of women at sea
- Exercise: 60 enlisted women served on board the U.S.S. Sanctuary
- Results: Women performed every shipboard function with the same ease, expertise and dedication as men.
 Morale was high
 Response of male and female sailors was favorable

OPERATION BOLD EAGLE

- Purpose: A guerilla warfare and airborne assault exercise
- Exercise: 150 women and 4000 men participated
- Results: Women were exposed to the same hardships in the field as men and they performed very well

ARMY HUMAN ENGINEERING LAB TEST

- Purpose: To test the ability of women to operate 105 and 155mm artillery howitzers
- Exercise: 13 women office workers participated in a three-week physical training program and were then assigned to the "heaviest, noisiest job in the army." They loaded and fired the howitzers and met a tough rate-of-fire test of four rounds a minute for three minutes, then one round a minute for the 155mm and ten rounds a minute for three minutes for the 105, followed by three rounds a minute on the same weapon.
- Results: The women were rated "professional, outstanding, and phenomenal."

The above tests demonstrate that women are capable of performing satisfactorily or better in combat-related positions. Those who would restrict women from combat based on the fear that the quality of our military would be adversely affected should, rather, advocate women in the armed forces. Selection and training of soldiers based on ability rather than gender would result in a better quality military than could be achieved by arbitrary exclusion of one-half the potential pool.

WOMEN SOLDIERS LOSE LESS ACTIVE DUTY TIME THAN MEN

- MYTH: Women, because of pregnancy and menstruation, will lose more active duty time than men.
- REALITY: The evidence is that there is little difference in the time lost by women and men and that, in fact, it appears that less time is lost by women.
 This is true even when pregnancy, the largest single factor in lost time for women, is included.

The only definitive lost time study was done in the Navy and it shows that men lose twice as much time as women.

COMPARISON OF LOST TIME FOR ENLISTED MEN AND WOMEN IN THE NAVY		
Lost Time Category	Lost Days as a % of Total Days Available	
	Women	Men
Alcohol Abuse	.09	.12
Drug Use	.02	.12
Unauthorized Absence (AWOL)	.05	.24
Returned Deserters	.07	.62
Abortion	.03	0
Pregnancy	.37	0
TOTAL	.63	1.10

THE RETENTION RATE OF WOMEN SOLDIERS IS HIGHER

- MYTH:** Women are more likely to drop out of the service (because of pregnancy, marriage, or alleged lack of ability) thereby wasting valuable training invested in them.
- REALITY:** Women are being retained in the services at higher rates than men.

Percentage of 1971-76 Enterees Still on Active Duty as of 6/76		
Year of Entry	Female	Male
1971	22.8	17.6
1972	28.0	23.4
1973	43.1	37.5
1974	61.6	58.3
1975	75.9	74.6
1976	87.7	87.4

Of those recruited in 1973-1976, 64% of the men remained on active duty as of June 1978 compared with 70% of the women.

ECONOMICS OF WOMEN IN THE MILITARY

Opening the doors to more women in the military would prove cost-effective. The simple fact is that it costs far less to recruit high quality women than to recruit high quality men.

Because of the restrictions on the number of women the services will accept, highly qualified women are recruited without effort while less qualified men are sought with incentives and high cost advertising campaigns. Excluding enlistment bonuses, the costs for an Army recruit are:

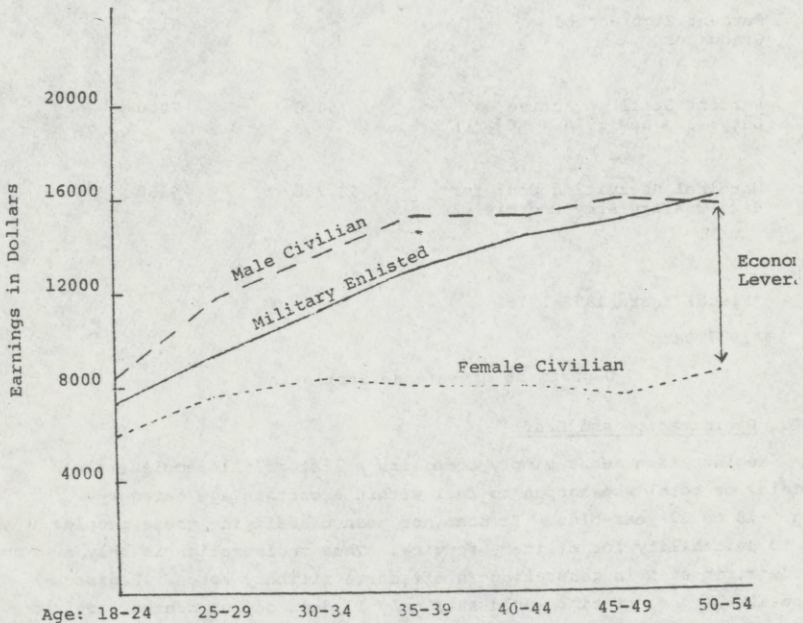
High Quality Men	-----	\$ 3,700
High Quality Women	-----	\$ 150
Low Quality Men	-----	\$ 150

Many people believe that the military spends more money per female recruit because of "difficulties" in training, housing, clothing and recruiting women. This is simply not true. The average woman

in the military costs the Defense Department about 8% less than the average man according to an often-quoted study on Women and the Military by Binkin and Bach for the Brookings Institution. The average annual per capita costs of providing medical care, housing and transportation are approximately \$982 less for women than for men.

Despite the sex discrimination which restricts them to few and truncated career paths, the military is attractive monetarily to many women. Especially for those women who pursue traditional careers, the average pay for enlisted military personnel far surpasses the average pay for civilian women who earn 59¢ for every \$1 earned by men. The services, unlike the private sector, do pay men and women equally if they are of the same grade, longevity, and skills. Like the private sector, however, enlisted women are clustered in the lower pay grades and are under-represented in the higher pay grades.

Comparison of Mean Annual Earnings of Civilian Year-round Full-time Wage and Salary Workers with at Least Four Years of High School but Less than Four Years of College by Sex and Age, and Military Enlisted Personnel by Age, Calendar Year 1975



Source: Binkin-Bach Study -- The Brookings Institution

CHARACTERISTICS OF MALE & FEMALE RECRUITS*

<u>Characteristic</u>	<u>Male</u>	<u>Female</u>
Average Age	18.9	20.0
Percent Married	11.6	11.6
Percent Black	18.5	16.1
Percent Hispanic	Not Avail.	3.1**
Percent High School Graduates	62.9	91.7
Percent Still on Active Duty, 30 June 1978	64.0	70.0
Marginal Recruiting Cost for High Quality Army Recruit	\$3,700	\$150

*Fiscal Years 1973-1976

**1977 Data

Department of Defense Statistics

III. Registration and Draft

Registration means simply compiling a list of all people (male, female, or both) who happen to fall within a certain age category, e.g., 18 to 22 year-olds. It does not mean classifying these people as to suitability for military service. Thus registration is only a crude first step in generating an effective military force. Registration at the present time would save only 13 days of the months required to produce military personnel with even minimal training if a draft were to actually follow registration. This is the real effect of registration and its relevance to our military preparedness.

A draft subsequent to registration would mean the classification, induction and training for military service of a large fraction of all young people in a certain age group. It is important to remember that every draft has included exemptions and deferments. Although one can no longer openly buy one's way out of the draft as during the Civil War, large numbers of men are exempted because of their physical or mental condition, because they support more than a certain (arbitrary) number of family members, or because they possess critical skills. Deferments have been granted for completion of education and training

and for employment in fields deemed vital to the war effort. Since our armed forces have been staffed on an all-volunteer basis since 1973, a draft represents a complete reversal in policy.

Some would have us believe that the shortcomings of the All Volunteer Force have been so serious that the draft is the only recourse. How does the AVF compare to the pre-1973 draft military? A 1978 Department of Defense study of the AVF showed it to be superior to the draft military with respect to:

1. Educational Level -- One measure of the increased educational level is the percentage of high school graduates. This has increased from 68% of those entering the services in 1972, the last year of the draft, to 77% of all recruits in 1978. Other measures, such as the percentage of the enlisted force with some college education, also show an increased education level in the AVF.
2. Mental Quality -- Written test scores show that mental quality of recruits in the AVF is better than that in the draft era forces. One illustration of this improvement is the decrease from 14% to 5% of personnel in the lowest mental quality category during the years the AVF has been in existence.
3. Discipline -- Military discipline as measured by court-martial rates, non-judicial punishment rates and desertion rates has steadily improved since the inception of the AVF. For example, desertion rates have dropped from 25 per 1000 in 1973 to 18 per 1000 in 1977.

Initial concerns that the AVF would be less representative of society as a whole than the draft forces have not materialized. Geographic representation and family income profiles almost precisely duplicate those of the draft. In both, the very rich and the very poor are under-represented.

Since the inception of the AVF, however, minority participation in the military has increased significantly. The 1978 study of the Department of Defense on the AVF did not publish statistics on percentages of all minority service persons, but did publish this data for blacks. In the AVF, the percentage of blacks continues to increase, both in officer and enlisted ranks. By the end of 1978, blacks comprised 17% of total active duty armed forces personnel: 19% of enlisted personnel and 4% of officers. In the Army, blacks comprised 7% of officers, 29% of enlisted personnel, and 34% of new recruits, an all-time high. In fiscal years 1964 to 1972, before the AVF came into existence, blacks comprised an average of 10.8% of total enlisted active duty forces.

The disproportionate numbers of black volunteers are partially the result of job discrimination and blocked mobility patterns in the larger society. Indeed, many civil rights leaders believe that a return to the draft would in fact threaten job opportunities for blacks in the military.

As to cost savings, in contrast to the claims that a draft force would be far less expensive, it was estimated in the 1978 Department of Defense study that the savings in returning to a draft force would be only about 0.2% of the Department of Defense budget. According to the 1978 Department of Defense study: "Considering that the career

force has always been [staffed] by volunteers, the only savings one should anticipate are those associated with recruiting, paying, and training the first-term members. Those savings would be partially offset by the cost of operating the conscription system. Annual net savings could be as high as \$250 million per year, not considering any change in pay rates."

Pay rates are, however, a critical factor. Draft advocates may be planning to "save" money in personnel by freezing or reducing pay at lower enlistment levels. The point is that the major way the draft could result in significant cost savings would be through gross exploitation of draftees considering that junior pay is barely at minimum wage today.

Considerable concern was expressed during planning for the AVF that recruitment alone could not maintain the required staffing levels. This has not proved to be the case. Since 1974 staffing levels in the AVF have been within 1.5% of those authorized by Congress.

Other arguments for resuming the draft focus on the understaffed reserve forces. Department of Defense statements indicate that the origin of this problem lies in the initial assumption by the military that the major problems in the All-Volunteer Force would be with the active components. These therefore received most of the management attention and the reserves were left to languish. Defense spokesmen have stated that increased attention to the reserves will undoubtedly yield better results and that until such efforts are made it would be reckless to advocate conscription to fill vacancies in the reserve.

The establishment of the All-Volunteer Force is in line with our tradition of using the draft only in time of war. Since no case can be made for any deficiency in the All-Volunteer Force, it is legitimate to question the motivation of those pushing for a return to the draft. It is even more difficult to argue for the wasted expenditures and efforts of registration without a draft.

IV. The Registration and Drafting of Women

NOW opposes the registration and drafting of anyone. The elimination of sex discrimination in the military would, in and of itself, markedly improve our national defense. However, to adequately utilize women, as volunteers or as draftees, sex discriminatory practices must be eliminated. In fact, if the current restrictive legislation, regulations, policies and procedures are maintained in the military, the percentage of women cannot increase much beyond 15% whether or not there is a draft of women.

If a draft and registration is instituted, NOW believes it must include women. As a matter of fairness and equity, no draft or registration that excludes one half of the population in 1980 simply on the basis of gender could be deemed fair. Young people who have common aspirations, hopes and education will resent women being excluded. Women will pay with more limited opportunities and rights. Our nation will pay by limiting its resources. All will pay by the constant ex-

clusion of females and their priorities from the nation's decision-making.

Any registration or draft that excluded females would be challenged as an unconstitutional denial of rights under the Fifth Amendment. Two developments since the termination of the Vietnam-era draft weigh heavily on the question of women's inclusion in any future registration and draft and lead to the conclusion that excluding women would be found unconstitutional.

The first of these was the establishment in 1976 by the Supreme Court of a more stringent review standard for sex-based classification and the subsequent application of this standard to legislation containing sex-based classifications. The second development is the consistently high performance of women in all military categories to which they have been admitted as the result of recent changes in military policy.

There is no doubt that any attempt to institute registration and a draft excluding women would result in legal action. There are also very substantial grounds for believing that the courts would find any such attempt in violation of the Equal Protection Clause of the Fifth Amendment.

Between 1980 and 1992 the pool of young males will decrease by almost 25 percent. This drop, coupled with the increasing complexity of modern weapons and the even more limited pool of technically trained or trainable youth, leaves little room for rational argument against women's increasing participation in the military, on either a voluntary or involuntary basis. The military simply will not be able to operate without utilizing women.

Any draft, whether it includes women or not, will have deferments and exemptions based upon such matters as physical and mental health, specialized skills, or family dependents and obligations. The draft has usually been applied to young people, the overwhelming majority of whom are not married and do not as yet have family responsibilities. In any case, if women were included, such exemptions would have to be written to be applicable to either sex. Congress would retain the power to define the exemptions from compulsory service which then would be applied to both men and women.

The issues of fairness, legality and need notwithstanding, the full integration of women in the military cannot occur until sex discrimination is routed out. The April 1977 report of the U.S. Commission on Civil Rights found 140 provisions relating to the armed forces in Title 10 of the U.S. Code which contained sex-based references. Not until discriminatory regulations, laws, practices and policies are off the books will women gain equal access to the opportunities available in the military.

V. Sex Discrimination in the Military

Sex discrimination is rampant in the military. The single largest reason given is the exclusion of women from combat roles. In reality,

sex discrimination in the military serves to protect male career lives and is based on stereotypic assumptions about the inferiority of women.

In considering women in combat there have been two basic questions:

- (1) Should women be exposed to the conditions of combat and war, and
- (2) Will women in combat adversely affect the proficiency of the combat force?

Clearly, neither men nor women should be exposed to war. It is obvious, however, that without the establishment of a war-free society it is impossible to shield women from the violence of war either as civilians, soldiers, or as relatives or loved ones of both.

Women, as members of the civilian population, have always suffered great damage as the front lines of war merge with their homes. If civilian women have been unable to escape from war, it is surely evident that women in the military have been repeatedly exposed to combat conditions. Although women have been barred from combat on paper, they have often served in the midst of it, and been exposed to the same dangers and hardships as their male counterparts. Women's Air Service Pilots, nurses, medical technicians, and many more have served and died for their country. Women are assigned to combat support and combat service support units, and function side by side with men. "Behind the lines" jobs are hardly safe in a world where there are fewer and fewer known "lines."

Moreover, the hysteria at the thought of sending women into combat must be placed in its proper perspective. In the last draft, less than 1% of the men eligible were inducted and subsequently assigned to a combat unit. If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit--whether or not there was a female combat exclusion--would be negligible.

The second question that is inherent in any plea to keep women out of combat is whether the presence of women soldiers will lower the fighting quality of the military. Again, clearly, women soldiers who have been trained have demonstrated their capabilities. The numerous tests cited in Section II are proof that those persons who serve in combat must be chosen on the basis of ability rather than gender if the military is to be as proficient as possible.

Thus, it is clear that there are no genuine reasons to exclude women from combat. There are, however, grave effects on the opportunities available to military women based on the unnecessary combat restrictions.

The chart below, entitled "Service Data Submission on Potential Use of Women," indicates the Department of Defense's explanation of restricted positions for women. The single largest reason for closing positions to women is indicated in line B/C -- combat and combat support. Combat restrictions do not now and never have "protected" women. They do assure that military women can never reach the same posts as men or follow unlimited career paths. They do serve to restrict women from 43% of the total military positions. In the Navy, for example, limiting women to non-combat ships allows only a

fraction of women to serve in a "warfare" specialty, thereby insuring inequities in career opportunities and assignments.

SERVICE DATA SUBMISSION ON POTENTIAL USE OF WOMEN

<u>Positions</u>	<u>Percentage</u>
A Total Positions	100%
B/C Combat & Combat Support	43%
D Net A-(B/C)	57%
E Rotation Base	7%
F Physiological Limits	0%
G Other Limits	23%
H Open to Women H=D-(E+F+G)	27%
I Women Utilized 1977	6%

Aside from combat restrictions, however, the chart tells a shocking story about discrimination against women in the military. Line E indicates that an additional 7% of positions are reserved for men to provide a base for sea/shore and overseas/continental U.S. rotations. Line G shows that yet another 23% of positions are reserved for other reasons. What are the other reasons? Slots reserved to provide career progression opportunities for men. Limitations on the concentration of women in various units. Lack of available housing--the Air Force, for example, excludes women from 45% of its overseas positions because of "unacceptable" facilities. The Air Force considers it "unacceptable" for men and women to share a common hall.

Perhaps the most revealing line is line F. The military there states that no additional positions are excluded for physiological reasons. The armed forces are saying that aside from those positions restricted because of their "combat" nature, there are no jobs in the military which women cannot perform because of size or strength.

The bottom line, using even this most liberal of measures, is dismal--a total potential of only 27% of military positions open to women, and women today comprise even less at 8% (6% in 1977).

Women's entry into the military is hampered by physiological restrictions. Height and weight restrictions serve to assure that women remain frailer than men by imposing lower weight limitations on women regardless of their bone structure or muscularity. The maximum weights for men and women six feet tall in the various branches of the military are indicated below:

		<u>MAXIMUM WEIGHT FOR 72"</u>	<u>DIFFERENCE</u>
ARMY	Male	227	56
	Female	171	
NAVY	Male	227	52
	Female	175	
MARINE CORPS	Male	203	32
	Female	171	
AIR FORCE	Male	196	29
	Female	167	

There are clear inequities in the different limitations. Women are not allowed to weigh the same or even near the same as men regard

less of their bone structure. An Air Force regulation even allows further adjustment of the maximum weight allowance for men with large bone structure, but women with large bone structure are not granted any adjustment.

To illustrate the problems that these restrictions can cause beyond the initial problem of being allowed to enlist, there is the regulation that provides that if a male or female in the Air Force wants to be a firefighter, he or she must be at least 5'6" and weigh at least 140 pounds. The maximum allowable weight, however, for a 5'6" woman in the Air Force is 141 pounds. In other words, an Air Force woman 5'6" must be within one pound of her maximum weight allowance to be a firefighter.

Yet another source of discrimination is the failure of the armed forces to provide equipment and clothing adapted for use by women and men of small stature. The Defense Advisory Committee on Women in the Services (DACOWITS) recommended in the fall of 1979 the adaptation of military clothing to suit women's needs. During visitations to military installations, DACOWITS found that there were "items of present field work and organizational clothing for women that fit women so poorly that they constitute health and safety hazards and are inappropriate and non-functional."

Finally, there is the problem of sexual harassment of women in the military which has assumed epidemic proportions. The entire range from verbal abuse to physical attack can be found at any military installation. The attitude of some men is often one of resentment — that "this man's army" is being invaded by women who have no place in it.

Some service men look upon service women as a sexual convenience and freely use rank to proposition them. Official response to reports of sexual harassment is often non-response, the product of a "boys will be boys" mentality. Refusals on the part of women are often countered with charges of lesbianism, redeemable for a less than honorable discharge. Discharge may result regardless of the veracity of the charge.

Suspected homosexuality on the part of male and female military personnel constitutes grounds for discharge, with female personnel generally prosecuted more harshly than males. The waste of human talent and potential that results from the military's irrational discrimination against lesbians and gay men is oppressive to the individuals involved and is not in the national interest.

Beyond the discrimination against women who are actually in the military, there is lifelong discrimination against those women who are excluded from the military through no fault of their own. They suffer discrimination in the pursuit of governmental civilian jobs because of veterans preference. Veterans are, by law, given preferential treatment in federal jobs and most state jobs, both in hiring and promotions. Currently, because of past discrimination in the military, only 2% of our nation's veterans are females. Considering that the federal government alone has three times as many civilian positions as American Telephone and Telegraph (AT&T), the nation's number one pri-

vate employer, this results in massive discrimination against females. There are more than 2.8 million federal jobs. More civilians work for the Department of Defense than for General Motors. And the Veterans Administration has almost as many jobs as Exxon and Dupont Corporation combined. Discrimination against women in the military serves to injure all women in governmental employment and in salaries for their entire lives. To make matters worse for women, private employers are also encouraged by the government to provide preference to veterans.

The effects of discrimination against women in the military cannot be measured in dollars and cents alone. Being told they are unfit for combat training, that they need "protection," women are more readily victims of violence of every kind. Without training and the confidence that they can defend themselves, women live in daily fear of physical assault. One must ask, also, whether a would-be rapist might be less likely to attack a woman if he thought she had been trained as a Marine.

VI. Summary

The present discussion about the registering and drafting of women is without our nation being at war. For the past several years, without any international crisis, the discussion of registering and drafting women has been a serious part of the drive to return to a drafted military. Whatever happens about registering or drafting women in the short run, in the event of a real national crisis or war, women will be drafted (if men are) and will serve.

Why? Because they are needed. Women today are an essential part of our nation's work force and are a key part of the trained and trainable technical pool of young people required to operate a modern military. Moreover, because of sex segregation in our labor force certain work categories, which are essential to the military, are overwhelmingly female. Women are a vital part of the administrative, computer, communications, medical and other technical personnel of this nation. Nurses, for example, will serve and will do so in combat areas. They deserve to be trained to defend themselves and their patients, and they deserve to receive all benefits given other combatants.

Discrimination against women in the military costs this nation literally billions of dollars a year because better qualified women are not recruited while less qualified males are and at much higher enlistment bonuses and costs. The combat restrictions serve to bar an entire sex from a wide range of career opportunities and to deprive our national security of vital personnel resources. Women in combat-related categories have been in combat, wounded and killed. But they have served at greater risk to themselves because they have not had adequate combat training.

Discrimination against women in the military depresses opportunities, career paths, training and benefits for women. The military provides thousands of jobs, training programs and educational opportunities which are, for the most part, presently closed to women. Military pay which is, on the average, some 40% higher than female

civilian pay, could be the only way out of poverty for countless young women. Restrictions on women in the military, far from protecting them, serve to continue their second class citizenship, pay and opportunity. And this discrimination exercised by the military affects women's employment opportunities and wages throughout their entire work lives because of veterans preference.

If people served in the armed forces according to their own abilities, the national defense would gain by increasing the size of the talented personnel pool at lower recruiting costs while women would have an increased number of jobs, training programs, and financial benefits. The very possibility of a need for a draft or registration would be reduced because the numbers in the available pool of recruits for the All-Volunteer Forces would double.

The debate about whether women will serve in the military is over. They must serve, but at what cost to themselves?

MAJOR SOURCES

America's Volunteers: A Report on the All-Volunteer Armed Forces. Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), second edition, September 1978.

Hearings on Women in the Military, U.S. House of Representatives, Armed Services Committee, Subcommittee on Military Personnel, November 1979.

The Role of Women in the Military. Hearings before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee, Congress of the United States, July 22 and September 1, 1977.

Use of Women in the Military. Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), second edition, September 1978.

Women and the Military. Binkin, Martin and Bach, Shirley; The Brookings Institution, Washington, D.C.; 1977.

Women Content in the Army: REFOGER 77 (REF-WAC 77). U.S. Army Research Institute for the Behavioral and Social Sciences: Alexandria, VA; May 30, 1978.

Women Content in Units Force Development Test (MAX WAC). U.S. Army Research Institute for the Behavioral and Social Sciences: Alexandria, VA; October 3, 1977.

Women and the Military: A WEAL Fund Kit. Women's Equity Action League Educational & Legal Defense Fund, Washington, D.C.; 1979.

Women in the Armed Forces. (Issue Brief IB79045); Collier, Ellen C.; Foreign Affairs and National Defense Division of the Library of Congress, Congressional Research Service; October 26, 1979.

Women in the Military: Topics for Discussion--1979. Gilden, Nina; Legislative Assistant for Military Affairs to Congresswoman Patricia Schroeder (D-CO).



425 13th St., N.W.
Washington, D.C. 20004 (202) 347-2279

Mr. WHITE. Thank you very much.

Mrs. Holt.

Mrs. HOLT. No questions.

Mr. WHITE. I am very curious. When were women taken in as prisoners of war?

Ms. GOLDSMITH. In the Philippines there were 100 nurses taken prisoner of war.

Mr. WHITE. After Bataan, where?

Ms. GOLDSMITH. I am sorry?

Mr. WHITE. Were there any prisoners of war, women prisoners of war, taken anywhere after Bataan-Corregidor?

Ms. GOLDSMITH. I can't tell you whether it was after Bataan or Corregidor.

Mr. WHITE. That is what I am curious about. So you are advocating women in combat?

Ms. GOLDSMITH. We are not advocating women in combat. We are saying the combat bar should be removed because it acts as a discriminatory disadvantage to women in the military.

Mr. WHITE. If you take the bars down, then you are saying women should be in combat, otherwise you are still discriminating.

Ms. GOLDSMITH. I am sorry, that is vastly different from advocating women being in combat. We say, yes, if anyone is in combat, men and women should be in combat.

Mr. WHITE. In all capacities, all MOS's?

Ms. GOLDSMITH. In all the individuals are capable of performing, yes.

Mr. WHITE. Now, what about the question about the women flying aircraft and being shot down and taken prisoners of war? Do you think that women would have experiences that would otherwise not be experienced by men? Would you have any qualms about that type of situation?

Ms. GOLDSMITH. I have considerable qualms when I think about war in general and certainly there are things that women are subject to that men are not, but they are subject to those whether they are serving in combat or not. Certainly one of the most tragic occurrences in any war is the devastation of the female population, the civilian population. Whether or not women are in positions designated as combat or not really has little bearing on that. I would in fact prefer to see a woman trained in combat and then be in that kind of situation. She is more likely to be able to protect herself.

Mr. WHITE. Thank you very much for your testimony, Ms. Goldsmith.

The next witness is Mrs. Elaine Donnelly, of Livonia, Mich.

STATEMENT OF MRS. ELAINE DONNELLY, LIVONIA, MICH.

Mrs. DONNELLY. Thank you, Congressman White.

I am here to speak as one of the millions of women for whom the National Organization for Women does not speak. I am grateful for the opportunity to speak to you while Congress still has the option to either register women for the draft, or to exempt them. Since the Equal Rights Amendment has not been ratified, we still have the option to

discuss this important issue, which deserves the most serious scrutiny and debate. This is not a women's rights issue—it's a national defense issue.

I am distressed because President Carter is trying to sugar-coat the bitter pill that he is asking American women to swallow. Why is the President insisting that he is personally against the idea of women in combat, when he knows that his own Department of Defense has been lobbying to remove the only laws that keep servicewomen out of combat positions? Furthermore, how can the President honestly claim that women should be drafted, but not for combat? He knows that if the ERA—which he favors—were in effect today, he could not even submit separate "his" and "hers" proposals to this committee, much less keep his promise to exempt women from combat duty in a future war. It is obvious to me, a civilian, that women are so fully and flexibly involved in the organization structures of the armed services today that it would be virtually impossible to separate them out in time of emergency. Nevertheless, a lot of people seem to be basing their opinions on the illusion that women would be drafted for service in a separate Women's Army Corps (WAC), even though such units were abolished years ago.

The President's proposal would force women into the nontraditional jobs that volunteer women are doing their best to avoid. As Gen. John K. Singlaub has pointed out, 85 percent of the volunteer women are clustered into only 10 of the 31 job categories open to them.

One does not have to be a major general to realize that in a tense world where many modern weapons are too destructive to use, conventional combat and "police" actions are more likely than ever. The history of our wars shows that even if women were strictly confined to combat support units, transferring ammunition, food and other necessities to the front line troops, they could find themselves under attack almost as often because of the essential nature of their support mission. Why, then, is the President trying to sugar-coat the truth by holding out the illusion that female draftees could be kept out of harm's way if his registration proposal is either adopted by Congress, or forced upon us by means of the ERA.

Instead of asking the question, "Why not draft women?" more people should be asking the questions, "Why should we draft women?" and "How will this strengthen our national defense and help to achieve our foreign policy objectives?" The purpose of raising an army is to defend the country and its interests, not to engage in social experimentation. If the drafting of women will not strengthen our Armed Forces and our position in the world community, then it should not be done. It would be a national disgrace—as well as unfair to our male and female soldiers—to send them to fight a war with less than the best army and equipment that this country can muster.

I know that women have served admirably in the volunteer army in peacetime. These women deserve moral support and respect, as well as the equal opportunities, education and veterans' benefits that they now receive. However, I am greatly concerned about the unique problems that would be greatly compounded if the percentage of women were doubled, tripled, or quadrupled by means of a draft.

News reports in recent weeks have shown that the high rate of pregnancy among servicewomen—about 15 percent per year—has an effect on combat readiness. The women who take advantage of the “early out” option for pregnancy do not have a problem, but the units that are left shorthanded do have a problem, as many generals have said. Then there are the mobility problems associated with the high percentage of single parents in the armed services, some of whom have had to take their children with them on alerts because of the shortage of baby sitters.

I am also concerned about the false sense of accomplishment that is being encouraged by Defense Department civilians who insist that women can do “almost” the same things men do, without mentioning that it takes the women “a little longer,” and that the physical standards have been lowered so that women can pass their tests. I understand that at West Point, women do flexed arm-hangs instead of chin-ups, carry 8 pound M-16’s instead of 11 pound M-14’s, and in pugilistic training, women are allowed to fight only other women. How does this prepare them to fight men?

Maj. Gen. John K. Singlaub has testified that upper body strength is essential for survival in a combat environment where equipment and weapons must be carried over all types of terrain in all kinds of severe weather. Why, then, is it that the women at Fort Jackson are allowed to get by with only 18 push-ups in 2 minutes, instead of 35 as required by the men? If women cannot keep up with the standard 30-inch marching step maintained by the men, then why is the Department of Defense trying to give the impression that women are doing everything as well as the men, as if speed or rapid mobility are not important in time of war.

I agree with Vietnam War veteran, James Webb, who said, “You can take football and modify the rules so the women can play. That’s fine until they face the Dallas Cowboys and get slaughtered.” (See Newsweek Feb. 18, 1980). The problem is that our young men would also be slaughtered in greater numbers if they are forced to accept and rely on female draftees who have been forced into roles they cannot handle.

The burden of proof is on the President, and the women’s lib movement which is to blame for the whole idea, to prove how the Army’s ability to respond in a wartime emergency would be improved if the percentage of women were drastically increased by means of a draft. No such evidence has been brought forward by those who would draft women for the first time in our history.

Instead of fulfilling his primary responsibility to provide for the national defense, the President has instead tried to appease the militant feminists within his administration. The President’s call to draft women may detract attention from a failed foreign policy, but it cannot make up for it. A proud record of volunteer service in history proves that brave women have always contributed, sacrificed and suffered in time of war. There is no need to draft women—just to prove a point about “equality.” Again, the purpose of raising an Army is to defend the country and its interests, not to engage in social experimentation.

Mr. WHITE. Thank you very much, Mrs. Donnelly.
Mrs. Holt.

Mrs. HOLT. I have no questions but I think that is very excellent testimony. Thank you very much.

Mrs. DONNELLY. Thank you.

Mr. WHITE. Mr. Montgomery.

Mr. MONTGOMERY. Thank you, Mrs. Donnelly. As I understand it, you just came in here on your own, is that right?

Mrs. DONNELLY. Yes, I am here as a civilian.

Mr. MONTGOMERY. You don't belong to any groups or represent any groups?

Mrs. DONNELLY. I am not here representing an organization. I am personally opposed to the Equal Rights Amendment, which you might have guessed, but I am here as an individual. I have done a lot of research on the subject and a lot of writing, and I do intend to write a couple of articles to submit to some magazine.

Mr. MONTGOMERY. That impresses me. That is what it is all about, that individuals can come in here like you. I believe you came down from Detroit.

Mrs. DONNELLY. Yes, that is right.

Mr. MONTGOMERY. Well, I agree with Mrs. Holt. I think it is excellent testimony and we appreciate your taking the time to come here.

Mrs. DONNELLY. Thank you, Congressman Montgomery.

Mr. WHITE. Thank you very much. You have given us good testimony today. We have a few more witnesses for today. I know that one other Congressman shares your opinion but others have an absolutely different viewpoint. We appreciate your taking such a long trip and your time and expense to come here.

Mrs. DONNELLY. Mr. White, I have just one more thing to add. In the research I have been doing, both in the regular research being taken before this committee in June 1978 and also in November of last year, I have come across an awful lot of information about the effectiveness of the Volunteer Army. It concerns me very much as a citizen, and I do appreciate the comments you made early on today because it reassured me that someone is concerned about our national defense, and I am hoping as one of you said earlier, that perhaps this bill proposal will encourage a reexamination of where we stand today. I am glad about that, and I hope it will serve that purpose.

Mr. WHITE. Of course, the All-Volunteer Force does have its problems. We have tried to be careful. People realize even if the Volunteer Force were working absolutely perfectly, we have to stand on registration because the failure in the reserve and the backup forces, and, of course, we are going to have to have both.

We are trying to resolve problems in the All-Volunteer Force by a number of means, this side of abandoning the idea, and I think some of the members of this committee have been successful, but the symptoms are rather disconcerting, but we are going to try to correct those before the year is out. At least it is something that will need correction.

Thank you very much.

We are going to call on Ms. Kathleen Teague, representing Mrs. Phyllis Schlafly, of the Coalition Against Drafting Women.

I see you have a statement. Would you like to summarize your statement and have the entire statement placed in the record, or how would you do it?

STATEMENT OF MS. KATHLEEN TEAGUE, REPRESENTING MRS. PHYLLIS SCHLAFLY, COALITION AGAINST DRAFTING WOMEN

MS. TEAGUE. Mr. Chairman, I personally thank you for the opportunity to be here to represent Mrs. Schlafly. She, unfortunately, couldn't be here. She is ill with the flu at home. She had sent me the testimony and had asked that I present it for her. It is really rather brief, and there are several attachments, as you can see. She is representing the Coalition Against Drafting Women, and I have the privilege of representing that same coalition a week ago before the Defense Subcommittee of the Budget Committee, and so I would like to give her testimony, if you would like, and I would be happy to answer any questions that you might have.

Mr. WHITE. You may proceed then.

MS. TEAGUE. I speak against the draft registration of young women. It is contrary to American traditions, laws, morals, and the wishes of the majority of the American people. It is contrary to the Judeo-Christian culture which honors and respects women in their role as wives and mothers. It is irrational because it treats as fungibles men and women, husbands and wives, and fathers and mothers, which they certainly are not.

Draft registration of young women is unnecessary because America has 16 million young men between the ages of 18 and 26, and there is no conceivable need for anywhere near that many in the armed services. It would reduce the military strength of the Armed Forces at a time when we need to increase it. It would send a signal of weakness to the rest of the world. It is an emotionally divisive issue which will tear this country apart to a far greater extent even than the Vietnam war.

During the lifetime of the members of this committee, Mr. Chairman, American mothers and fathers have sent their sons off to battle in three wars. They didn't like it, but they did it from patriotic motives. But American fathers and mothers are not willing for their daughters to be treated the same way.

The purpose of the Armed Forces is to defend the United States against its enemies. In order to achieve that goal, members of the Armed Forces are taught to kill and to be brutal and victorious in combat with potential enemies. We don't want our daughters taught to kill. Women's mission is to participate in the creation of life, not in destroying it. We expect our servicemen to be tough enough to defend us against any enemy—and we want our women to be feminine and human enough to transform our servicemen into good husbands, fathers, and citizens upon their return from battle.

We don't want our daughters subjected to the Army environment where there is little or no privacy, where the rape rate is considerably higher than in civilian life, where there is open toleration of immoral sex, where 15 percent of service women become pregnant, and where illegitimate births receive equal honor and financial rewards with legitimate births.

We don't want our daughters treated like men, which is the policy of the Armed Forces today ever since the separate women's corps were abolished. And we don't want our daughters subject to the sexual abuse

which is a frequent reality, as witness the recent hearings on this subject.

I offer as an exhibit and ask to have printed with my testimony two pictures from the newspaper called SSAM, pages 1 and 8-9, which is published by the U.S. Department of Defense. A picture speaks a thousand words. These pictures show how the Defense Department views our daughters in battle. The mothers and fathers of America are not willing to expose their daughters to that kind of treatment. It is bad enough to know that GI Joe is already thinking in these terms in the unisex army now. But to conscript our daughters to titillate their sexual fantasies is religiously, morally, culturally, and socially intolerable.

We all know that, regrettably, there are some women who like to display their bodies for the lustful eyes of men. The April Playboy magazine features a layout of nude servicewomen: One marine, three from the Navy, one from the Air Force, and two from the Army. Other national publicity was given to the female soldier who danced nude in a local bar during her off-duty hours.

Some have tried to say that only registration is proposed, not the drafting of women. But it would be wastefully expensive and ridiculous to register millions of young women if their were no purpose in doing so. That would make no sense. We are justified in concluding that the registration of young women would be like being a little pregnant: 9 months later, the callups would come—after the election, of course.

Some have tried to say that women should be registered for non-combat jobs only. This committee knows that the administration and leading feminist organizations are already on record in your hearings of last November as saying they want to assign women in combat, and as asking for the repeal of the laws which currently exempt women from military combat duty. So we have a right to disbelieve the administration about the combat issue. In any event, we certainly are not willing to deliver our daughters into the clutches of an administration that talks out of both sides of its mouth on this issue.

"Combat" has become a joker word for which the definition is constantly changing. Since this committee has refused to repeal the laws which exempt women from military combat, the armed services keep redefining "combat" so now it means only "close combat." Just pick up any newspaper or magazine and you will see graphic pictures and descriptions of servicewomen doing jobs and serving in units where they will surely be casualties if war breaks out. In any event, the American people do not want our daughters conscripted to defend the Persian Gulf whether the job is classified as "combat" or "noncombat."

Have we sunk so low that the men of America are willing to send their daughters and sisters and wives out to fight for them in the Persian Gulf, or wherever we face a crisis? I don't believe it. I agree with Gen. William Westmoreland that "any man of gumption doesn't want women fighting the battles of this country."

The only reason we are discussing the idea of draft registration of women is because a strident minority of women, who have great access to the media and high nonelected positions in the Federal Government, have been demanding that women be treated just like men, and

that gender be removed as a basis for all decisions. But that proposition certainly isn't rational when it comes to the military.

Many of the problems the military now faces are due to acquiescence in that irrational principle. Servicewomen are not fungible with servicemen because, on the average, women have only 60 percent of the physical strength of men, and it is unfair to all concerned to pretend that the difference does not exist. Motherhood is not fungible with fatherhood, and it is unfair to all concerned to turn the Army into a maternity ward and nursery in the vain purpose that pregnancy isn't any different from other disabilities.

When it comes to the draft, the gender difference is even more compelling. Our daughters are not fungibles with our sons. The drafting of wives is not a fungible with the drafting of husbands. The drafting of mothers is not a fungible with the drafting of fathers. There is a different role for males and females and it must start with not registering women.

Our young women have a constitutional right to be treated like American ladies, with the respect and the chivalry that ladies are accorded in the Judeo-Christian culture, and which women, wives, mothers, and widows are accorded under our fabric of American family law. Our young women have the right to be feminine, to get married, to build families and to have homes. Our daughters should not be deprived of rights which every American woman has enjoyed since our country was born just because a handful of women, unhappy with their gender, want to be treated like men.

We agree with the National Catholic Conference that:

We oppose both the registration and the conscription of women. The past practices of making military service an option for women, but not an obligation, has served us well as a society. We do not see good reasons for changing this practice.

It is a self-evident truth that the entire experience of recorded history teaches that battles are not won by using female troops. The draft registration of women would send a tremendous signal of weakness to the world. It would tell the world that we are reducing the combat-readiness of our troops to the physical strength of the average female. Worse, it would tell the world that we are more interested in social experimentation and in appeasing political pressure groups than in building a fighting force which can defend America. We cannot allow that to happen, for the sake of the survival of America.

I offer as attachments to my statement the following exhibits: (1) the two pictures from the Defense Department newspaper SSAM (exhibit No. 1 received for the record), (2) a splendid column by Michael Novak called, "Woman as Soldier: Reality Defied," (3) a statement by Gen. John K. Singlaub, USA (Ret.), showing how drafting women would reduce the military strength of the Armed Forces, and (4) a listing of members of the Coalition Against Drafting Women.

WRITTEN STATEMENT OF PHYLLIS SCHLAFLY

My name is Phyllis Schlafly of Alton, Illinois. I am here representing the Coalition Against Drafting Women, a coalition of Congressional, military, religious, and organizational leaders opposed to the drafting and the draft registration of women. I am the mother of four sons and two daughters, all of draft age or close to it.

I speak against the draft registration of young women. It is contrary to American traditions, laws, morals, and the wishes of the majority of the American people. It is contrary to the Judeo-Christian culture which honors and respects women in their role as wives and mothers. It is irrational because it treats as fungibles men and women, husbands and wives, and fathers and mothers, which they certainly are not.

Draft registration of young women is unnecessary because America has 16 million young men between the ages of 18 and 26, and there is no conceivable need for anywhere near that many in the armed services. It would reduce the military strength of the armed forces at a time when we need to increase it. It would send a signal of weakness to the rest of the world. It is an emotionally divisive issue which will tear this country apart to a far greater extent even than the Vietnam War.

During the lifetime of the members of this Committee, American mothers and fathers have sent their sons off to battle in three wars. They didn't like it, but they did it for patriotic motives. But American mothers and fathers are not willing for their daughters to be treated the same way.

The purpose of the armed forces is to defend the United States against its enemies. In order to achieve that goal, members of the armed forces are taught to kill and to be brutal and victorious in combat with potential enemies. We don't want our daughters taught to kill. Women's mission is to participate in the creation of life, not in destroying it. We expect our servicemen to be tough enough to defend us against any enemy—and we want our women to be feminine and human enough to transform our servicemen into good husbands, fathers, and citizens upon their return from battle.

We don't want our daughters subjected to the army environment where there is little or no privacy, where the rape rate is considerably higher than in civilian life, where there is open toleration of immoral sex, where 15 percent of service-women become pregnant, and where illegitimate births receive equal honor and financial rewards with legitimate births.

We don't want our daughters treated like men, which is the policy of the armed forces today ever since the separate women's corps were abolished. And we don't want our daughters subject to the sexual abuse which is a frequent reality, as witness the recent hearings on this subject.

I offer as an exhibit and ask to have printed with my testimony two pictures from the newspaper called SSAM, pages 1 and 8-9, which is published by the U.S. Department of Defense. A picture speaks a thousand words. These pictures show how the Defense Department views our daughters in battle. The mothers and fathers of America are not willing to expose their daughters to that kind of treatment. It is bad enough to know that GI Joe is already thinking in these terms in the unisex army now. But to conscript our daughters to titillate their sexual fantasies is religiously, morally, culturally, and socially intolerable.

We all know that, regrettably, there are some women who like to display their bodies for the lustful eyes of men. The April PLAYBOY Magazine features a layout of nude servicewomen: one Marine, three from the Navy, one from the Air Force, and two from the Army. Other national publicity was given to the female soldier who danced nude in a local bar during her off-duty hours.

Some have tried to say that only registration is proposed, not the drafting of women. But it would be wastefully expensive and ridiculous to register millions of young women if there were no purpose in doing so. That would make no sense. We are justified in concluding that the registration of young women would be like being a little pregnant: nine months later, the call-ups would come—after the election, of course.

Some have tried to say that women should be registered for noncombat jobs. This Committee knows that the Administration and leading feminist organizations are already on record in your hearings of last November as saying they *want* to assign women in combat, and as asking for the repeal of the laws which exempt women from military combat duty. So we have a right to disbelieve the Administration about the combat issue. In any event, we certainly are not willing to deliver our daughters into the clutches of an Administration that talks out of both sides of its mouth on this issue.

"Combat" has become a joker word for which the definition is constantly changing. Since this Committee has refused to repeal the laws which exempt women from military combat, the armed services keep redefining "combat" so

now it means only "close combat." Just pick up any newspaper or magazine and you will see graphic pictures and descriptions of servicewomen doing jobs and serving in units where they will surely be casualties if war breaks out. In any event, the American people do not want our daughters conscripted to defend the Persian Gulf whether the job is classified as "combat" or "non-combat."

Have we sunk so low that the men of America are willing to send their daughters and sisters and wives out to fight for them—in the Persian Gulf, or wherever we face a crisis? I don't believe it. I agree with General William Westmoreland that "Any man of gumption doesn't want women fighting the battles of this country."

The only reason we are discussing the idea of draft registration of women is because a strident minority of women, who have great access to the media and high non-elected positions in the federal government, have been demanding that women be treated just like men, and that gender be removed as a basis for all decisions. But that proposition isn't rational when it comes to the military.

Many of the problems the military now faces are due to acquiescence in that irrational principle. Servicewomen are not fungible with servicemen because, on the average, women have only 60 percent of the physical strength of men, and it is unfair to all concerned to pretend that the difference does not exist. Motherhood is not fungible with fatherhood, and it is unfair to all concerned to turn the army into a maternity ward and a nursery in the vain pretense that pregnancy isn't any different from other disabilities.

When it comes to the draft, the gender difference is even more compelling. Our daughters are not fungibles with our sons. The drafting of wives is not a fungible with the drafting of husbands. The drafting of mothers is not a fungible with the drafting of fathers. There is a different role for males and females and it must start with *not* registering women.

Our young women have a constitutional right to be treated like American ladies, with the respect and the chivalry that ladies are accorded in the Judeo-Christian culture, and which women, wives, mothers and widows are accorded under our fabric of American family law. Our young women have the right to be feminine, to get married, to build families, and to have homes. Our daughters should not be deprived of rights which every American woman has enjoyed since our country was born just because a handful of women, unhappy with their gender, want to be treated like men.

We agree with the National Catholic Conference that "We oppose both the registration and the conscription of women. The past practice of making military service an option for women, but not an obligation, has served us well as a society. We do not see good reasons for changing this practice."

It is self-evident truth that the entire experience of recorded history teaches that battles are not won by using female troops. The draft registration of women would send a tremendous signal of weakness to the world. It would tell the world that we are reducing the combat-readiness of our troops to the physical strength of the average female. Worse, it would tell the world that we are more interested in social experimentation and in appeasing political pressure groups than in building a fighting force which can defend America. We cannot allow that to happen, for the sake of the survival of America.

I offer as attachments to my statement the following exhibits: (1) the two pictures from the Defense Department newspaper SSAM, (2) a splendid column by Michael Novak called "Woman as Soldier: Reality Defied," (3) a statement by General John K. Singlaub, U.S.A. (Ret.), showing how drafting women would reduce the military strength of the armed forces, and (4) a listing of members of the Coalition Against Drafting Women.

WOMAN AS SOLDIER: REALITY DEFIED

[From the Chicago Tribune, Feb. 21, 1980]

(By Michael Novak)

At any given time, 15 per cent of the women in the U.S. Army are pregnant. Most of those pregnant are unmarried. If Congress permits the registration and drafting of women, the U.S. Army may become one of the largest maternity wards in the world.

Moreover, if the Army is designed to be 50-50 men and women, it would be wise to increase the number of women by 15 percent, in order to replace those

on leave for pregnancy. Otherwise, the military will constantly be short 15 percent of its official numbers.

Sex is as powerful a natural force as any known to the human race. It has destroyed many lives; it has led many to betray every sacred principle, loyalty, and duty. To place this raw force at the center of a military unit organized for military purposes is not rational.

The American people must choose. Does the U.S. military have a military purpose? Or is its purpose to test a philosophical fantasy? Do we want defense? Or social experimentation?

Many critics have said that the sweeping philosophical assumptions of the Equal Rights Amendment are based on fantasies and wishes. The reality of military service has brought these fantasies to a screeching halt. The prospect of military combat shattered them beyond repair.

Women are not equivalent to men, nor are they interchangeable with men. In some important senses, women are equal to men; in others not. Women do not have all the responsibilities of men, nor men all the responsibilities of women. Their experiences of life are different.

Some feminists consider it "oppression" that young men and women have different roles, and that male culture differs from female. Yet these differences in role and culture are both real and precious. It is faintly ridiculous to ask young men who have played high school football to go into combat with the young women who have been their high school cheerleaders and girlfriends. The differences between them in physical size, psyche, and culture are enormous. More than that, these differences in culture are important to the human race.

I have two daughters, age 8 and 12, and a son, 14. I do not want my daughters to undergo military experience. My son is eager to undergo it and, while I worry about him, I will approve. A higher civilization maintains and protects differences between the culture of females and the culture of males. Indeed, the existence of civilization depends on the institutional protection of those differences.

The male is more aggressive than the female (and not only in the human species). For the continued existence of the human race, he had better be. If male and female are thrown together without restraint, the aggressiveness of the male will dominate. In an unrestrained contest, the female will not prevail over the male. Men themselves need institutional restraints that limit male aggression.

During the period of pregnancy and child-bearing, women need space, time, peace, and civilized kindness. Civilization is structured so as to expand these qualities throughout as much of human life as possible. The circle of civilization has as its core mother and child.

Military service is not the place in which young women ought to become pregnant. It is not the proper setting for the central act of civilization. Military service always has been, and always will be, a necessary condition for civilized life. For barbarism is part of human nature, and is by no means diminishing under the gentle tutelage of 20th century enlightenment. But to oblige women to defend civilization as well as to nourish it is to destroy what one wishes to save.

A nation that would place its mothers under arms is a nation adrift in fantasy. It has lost its grip on reality.

The culture of mother and child is at the heart of civilization. In its place, militant feminism has ushered in the female combat soldier, the woman in blackboots.

WOMEN SHOULD NOT BE DRAFTED

(By Maj. Gen. John K. Singlaub, U.S. Army (Ret.))

Women should not be registered for military service because it would be a waste of time and money unless our nation really intends to draft women. Our national policy has always exempted women from the draft. Present laws do not permit the registration or the drafting of women, or the use of women in combat.

The real issue is: What is the role of women in the armed forces? Women should not be used in military combat for the following reasons:

1. Women are less able to survive. Survival in the combat environment depends upon upper body strength.

2. Women in combat would be an unnecessary distraction to males who would generally try to protect women.

3. Women in combat would be subject to capture by the enemy, and that would put unnecessary pressure on commanders for concessions.

4. Women in combat would be perceived by our enemies as military weakness and as a lack of national will to defend our country. Our enemies do not look upon armed forces as a sociological experiment.

Women should not be drafted because:

1. The army already has more women than it can use effectively. Women are 8 percent of the army and current plans call for increasing this to 12 percent. Volunteer women in the army choose traditional roles, not jobs traditionally performed by men; 85 percent of all enlisted women choose only 10 of the 31 classifications open to women. Of course, if women are drafted, they would be forced into the nontraditional roles which volunteer servicewomen are doing their best to avoid.

2. As the female percentage increases, the effectiveness of the army decreases. Females have twice as much lost time as males.

3. When pregnancy is added to these figures, females have three times as much lost time as males: 15 percent of the women in the army are pregnant; 6.1 percent deliver their babies and remain in the army; 5.3 percent have abortions; 4.3 percent are voluntarily separated. The armed forces are not permitted to discharge pregnant servicewomen.

4. The turnover rates show a big difference between men and women: 68 percent of career servicemen reenlist, but only 48 percent of career women.

5. The attrition rate is significantly higher for women than for men: 42 percent of the women drop out compared with 24 percent of the men with the same qualifications.

6. Physical standards have been lowered to accommodate women's lower physical abilities.

7. When the female percentage in the army passed 5 percent in 1975, reenlistment by career servicemen began to decline significantly. It is obvious that they perceive that the armed forces are not as good as they were, and they want to get out.

The argument is made that, if only men are registered, a lawsuit will be filed to force equal registration of men and women. If this is true for registration, the very same arguments about equality would apply to drafting women and men in equal numbers, or at least in numbers that reflect the male-female proportion of our population. The same arguments would also apply to the equal assignment to combat duty.

The armed forces simply cannot use 50 percent women or anything close to it. 50 percent women would disastrously weaken our armed forces.

The armed forces of the United States should not be used in a time of military mentation. That would only lower our national security in a time of military crisis and send a signal of weakness to the rest of the world.

COALITION AGAINST DRAFTING WOMEN

A listing of Americans who oppose the registration and the drafting of women for military service.

CONGRESSIONAL

Hon. Marjorie Holt
Hon. Richard Ichord
Sen. Jesse Helms

MILITARY

Maj. Gen. John K. Singlaub
Gen. Lewis Walt
Lt. Gen. Daniel Graham
Brig. Gen. Andrew Gatsis
Rear Adm. A. C. Burrows

RELIGIOUS

(Most of those listed are preachers representing entire churches)

Dr. Jerry Falwell
Dr. Bob Billings
Dr. Gregg Dixon

RELIGIOUS—Continued

Dr. Bill Pennell
Rabbi Herman Neuberger
Dr. Herbert Fitzpatrick
Larry Easterling
Dr. Royal Blue
Joe E. Stroube
John B. Ames
Frances E. Sweat
Dennis Coates
Vicki Smith
Roy Bronkema
Ronald H. Young, Sr.
D. Clifton Wood
Rev. Fletcher A. Brothers
Rev. Ron Marr
Bobby Moore
John Mack Pittman III

COALITION AGAINST DRAFTING WOMEN—Continued

RELIGIOUS—Continued

Darrell Patrick Orman
 J. P. Mills
 Earl E. Whitwell
 Rev. Charles Carroll
 Mark Hall
 T. W. Davis
 Larry L. Simmons
 Bob C. Bierschank
 Ronald Harris
 Tom Willis
 Karl Selander
 Maurice Clayton
 Paul M. Hanselman
 Robert E. Whitaker, Jr.
 Rev. Vernon Brewer
 Dave B. Neely
 Richard Headrick
 James A. Harben
 Johnny W. Nutt
 George W. Knight, III
 Jay Letey
 Dr. Herb Bowdoin
 B. Greer Garrott
 Alan T. Mabry
 L. G. Hansen
 Jack May
 John Bergland, Jr.
 Douglas W. Petersen
 Larry Lewis
 Wayne R. Rodgers
 James O. Phillips
 Zack M. Guess
 Edwin Bearl Carter
 D'Arcy Hodges
 Ben J. Martin
 Charles D. Booth
 James A. Borchert
 Lane G. Adams
 William W. May

RELIGIOUS—Continued

Mrs. Wm. E. Harward
 Louis Wilson Ingram, Jr.
 Keith D. Kinney
 Collis R. Davis
 Michael R. Marcey
 Ken Carpenter
 Dr. John B. Wright
 Bob McCustion
 Steven Herring
 Dale R. Collins
 David N. McQuade
 Wm. E. Cecil
 Wm. E. Bronson
 Charles E. Cecil
 Charles W. Keown
 Richard P. Oldham
 Irl W. Nikkel
 Rafael B. Cruz
 Karin M. Sewell
 Jack Stack
 Dr. Paige Patterson
 Earl J. Hartlage
 Bruce Bechhold
 Glen Roachelle
 Dr. Fred Lowery
 Vaughn W. Denton
 Russell J. Clubb

ORGANIZATIONAL

National Council of Catholic Women
 American Security Council
 Eagle Forum
 Religious Roundtable
 Conservative Caucus
 Young Americans for Freedom
 Catholics for Christian Political Action
 Family America
 Moral Majority
 Intercessors for America

Mr. WHITE. Thank you very much.

Mrs. Holt.

Mrs. HOLT. I have no questions, Mr. Chairman, but I thank you and Mrs. Schlafly on your part. We do appreciate very much your expressing your views and Mrs. Schlafly's.

Ms. TEAGUE. Thank you, Mrs. Holt.

Mrs. HOLT. The thing we haven't heard is that there is no military necessity for it.

Mr. WHITE. Thank you, Mrs. Holt.

You don't object to women volunteering in the service today, do you?

Ms. TEAGUE. No; I think that there are many women in the service today who are highly motivated and who are doing a very good job as volunteers.

I might point out that there is a very tiny percentage of the American women who are interested in the military. I have also done some independent research, and I have found that of the 65 million women

of adult career age in the United States, only 160,000 of them are currently in the military or have chosen the military as a career, and that means that only two-tenths of 1 percent of the career age adult women in the United States have chosen the military. So I really don't think there is a huge clamoring of women, certainly in any huge numbers, who are very anxious to be in the military.

Mr. WHITE. You have to look at the other figures. Of course, in 1985 at least and maybe even earlier, the services will be comprised of 13 percent women, and, of course, they make a good contribution, and the caliber of women that have come in, who are mostly high school graduates, have really kept the levels of quality very high, and they have been in the upper intellectual category, and therefore have supplemented the services. The All-Volunteer Force doesn't look as dismal as it really is, as a result.

Now, I believe you pretty well summed up a good deal of the testimony that has already been presented contrary to the registration of women. I think you have read the transcript of our earlier hearings so you pretty well know the testimony we have had prior to this time.

Does counsel have any questions?

Mr. WINCUP. No.

Mr. WHITE. Mr. Price.

Mr. DAVID PRICE. No.

Mr. WHITE. Thank you very much for appearing today, and we hope Mrs. Schlafly feels much better.

Ms. TEAGUE. Thank you very much.

Mr. WHITE. As this time we would like to call Mr. Emmett R. Lehman, Mennonite attorney, Lancaster, Pa.

**STATEMENT OF EMMETT R. LEHMAN, MENNONITE ATTORNEY,
LANCASTER, PA.**

Mr. LEHMAN. Thank you, Mr. Chairman and distinguished members. I want to say that I am grateful for your inviting me here, and I appreciate your consideration of my comments. I assume that my statement will be put in the record, and let me summarize, if I may.

Mr. WHITE. Without objection, the statement will be put in the record.

Mr. LEHMAN. By way of introduction, it isn't my purpose here today to engage in a lengthy debate about the relative merits or demerits of including women in our Armed Services. I think both positions have been well represented here. I just make the comment that there are certainly sound legal reasons for treating men and women equally. There are also strong reasons for exempting women so they may anchor family traditions and so forth. However, other than the fact that the Bible provides no precedent for including women in armed conflict, it seems to me that with respect to registration, there is no theological basis for the response of a woman in our religious tradition to be any different from that of a man. Therefore, I believe that the rank-and-file women in our religious tradition—and that is the Amish-Mennonite tradition, the plain sect from the country from which I come, Lancaster being the heart of it—I think the rank-and-file men and women in our

tradition will register if there are adequate safeguards provided so they may protect the integrity of their religious commitment.

I say that and make a comment on my statement. We are a people who obey the law, and we obey it no matter how oppressive and distasteful it may be except in certain circumstances of conflicting loyalties where we owe a higher allegiance to God than to government.

Let me tie it in specifically with one of the points I make in my paper, and that is with respect to registration. I heard your comment this morning, Mr. Chairman, when you indicated that the function of your committee is to develop a reservoir of manpower that would be quickly mobilized in time of emergency, and I read with interest the papers with respect to what the administration was proposing, and one of the points that I would like to make and make it very strongly is that it seems to me that any registration language that is reported out of this committee or that is required of the young people, both men and women of this country, should include a provision at that initial stage where a person of my tradition could indicate that he asked for an exemption based on his religious conviction.

Now, I am familiar with section 6-J of the prior Selective Service law and so on, but let me just make my points on page 2. Let me read them to you.

This provision, if included in the initial registration procedure, would accomplish four purposes; that is, make provisions for a mechanism at the initial registration stage whereby such a person may inaugurate the exemption claim under what I call the free exercise clause on religious training and belief. It would do four things:

1. It would provide the Government with a more accurate assessment of the net reservoir of available manpower after deferments and exemptions are taken into account;

2. It would provide an early beginning point for processing claims for exemptions or deferment;

3. It would expose those claimants who become students, "religious," "ministers" or "hardship cases" only when induction seems imminent.

4. It will help preclude "conscientious objectors" from resisting registration for the reason that the act of registering amounts to participating in military conscription.

Let me make a couple of comments. Back in my law school days, when I was in Washington, I did some Selective Service trouble-shooting work. That was in the era of 1967, 1968, and 1969, and primarily the cases that I saw were those that were problem cases, and I would take them to some of the men you probably knew, Dan Omar and General Hershey and so on. One of the things that was considered at that time was evidence against the sincerity of a claim if it was made only when induction seemed imminent. It was not conclusive evidence. It was a presumption.

I note that the administration in their proposal, what they apparently are offering as one possibility is that we would register those persons now. We would then at the point where mobilization was called for issue a mailogram that would include certain information with respect to deferment rights and exemption rights, and then when that registrant arrived at the Armed Forces examining and entry station he would opt whether or not he would be examined and then inducted or whether he would request an exemption or deferment.

I submit that with respect to points 1 and 3 it would be in line with the purposes of your committee that at the time of registration that process would begin.

Now, more particularly with respect to my people. When I say "my people" I am talking about those people that I am familiar with. I am not here representing a particular group, and my statement indicates I am representing myself and my family and many people I know to believe as I do.

No. 4. I think there are a certain number of our people who will have a problem with registry unless they can at that time indicate their religious position and request the exemption procedure to begin, because they will say this is initial registration but it is a part of the military.

Now, let me make a couple of additional comments. I know that there is some feeling in the Congress and on the Hill with respect to what is called a national youth service program, and I believe the administration referred to this in some of their proposals for selective service reform.

That relates to my point A, and that is, if the Congress would enact a national youth program wherein everyone should be put through the registration and draft procedure, I submit that it would make a real problem for our people based on what I have outlined in my printed text, that our religious belief requires an exemption for women and men, equally relevant to both, and it is a simple matter, and I have covered it on several pages, that our prior religious commitment demands certain things, and that includes the refusal to participate in the military.

This has been a historical thing. It is equally persistent among our people today, and if I may just read a couple of statements here, over to page 4. We take this position based on the fact that our understanding of the New Testament and our commitment to Jesus Christ demands that we refrain from participating in military. We have followed this historically. We have migrated, as has been necessary, where a government did not take into consideration the depth of this religious conviction, or where there was a minority group of our people that were oppressed. And I should comment further that has not been the case in this country.

Now, with respect to the function of this committee. I suggest that there is indeed a sound basis for these recommendations being followed. It is my position that the free exercise clause of the first amendment demands that a religious objector to participation in all warfare be afforded an exemption. I think the clause did not extend itself, obviously, to the nonreligious, and the Constitution does not guarantee unqualified freedom of conscience.

I think the nonreligious objector stands in a different position in terms of his legal standing contrasted to that of the religious objector. There is also historical precedent. This country has a long history of granting an exemption to individuals who because of their religious training and beliefs are sincerely opposed to participation in war in any form. I refer you to the report of the National Advisory Commission on Selective Service of 1967 (Burke Marshall Commission), which concluded that such an exemption was in accord with consti-

tutional guidelines, as well as: "Wise and right as a matter of legislative policy."

I submit that this precedent should be followed in any recommendations your committee makes with respect to legislation.

Let me read my one-paragraph summary.

In summary, I strongly urge that any registration language reported out of this committee will provide a mechanism at the initial registration stage whereby a religious objector to participation in all warfare may inaugurate exemption claim. Such a mechanism, I submit, will both benefit the Government and protect the Christian integrity of those whom I am here to represent.

My plea finds cognizance in the language and intent of the free exercise clause of the first amendment. In addition, such an exemption has a long history of legislative precedent. Further, such recognition of the religious objector to participation in all warfare is in accord with this country's tradition of the ruling majority protecting the religious liberty of the minority, even in times of great national crisis. We are eternally thankful to God for the United States of America, and for its record of tolerance and protection of our religious beliefs and practices.

Thank you.

WRITTEN STATEMENT OF EMMETT R. LEHMAN

Chairman White, distinguished committee members, staff, friends: I am Emmett Lehman, Attorney, from Lancaster, Pa., in the heart of the Dutch and Amish-Mennonite Country. I'm of the Annabaptist-Mennonite religious faith, and I'm here representing myself, my family and those many, many persons of the historic peace church tradition who believe, as I do, that our Christian commitment prohibits us from participating in warfare.

It is with a sense of respect and urgency that I appear before your committee. Certainly it is a healthy commentary upon the origins, the history, and the present structure of our republic, that an individual from a minority group—an essentially non-involved religious minority—should be invited to present commentary on pending legislation. I thank God for such a country. Thank you for your invitation, and for your consideration of my comments.

With respect to the matter now before this Committee, that of registration of women for non-combat service, our request is two-fold:

THE REQUEST

A. Make provision for an exemption for those women who, because of their religion, cannot participate in warfare in any form, including non-combat service.

B. Make provision for a mechanism at the initial registration stage whereby such a person (both men and women) may inaugurate the exemption claim.

This provision B, if included in the initial registration procedure, would accomplish four (4) purposes:

It would:

1. Provide the government with a more accurate assessment of the net reservoir of available manpower after deferments and exemptions are taken into account;

2. Provide an early beginning point for processing claims for exemptions or deferment;

3. Expose those claimants who become students, "religious" "ministers" or "hardship cases", only when induction seems imminent;

4. Help preclude "conscientious objectors" from resisting registration for the reason that the act of registering amounts to participating in military conscription.

It is not my purpose here to engage in a lengthy debate about the relative merits or demerits of including women in our armed services. Both positions are well represented in these hearings.

Certainly there are sound legal reasons for treating men and women equally. There are also strong reasons for exempting women so that they may anchor the family traditions of this country. I am aware that some of my brethren in the church are taking a position of resisting the registration of women. However, other than the fact that the Bible provides no precedent for including women in armed conflict, it seems to me that with respect to registration, there is no theological basis for the response of a woman in our religious tradition to be any different from that of a man. Therefore, I return to my main emphasis—the character of our religious belief requires an exemption for our women from all military service, and I strongly urge that the initial registration procedure include a provision for inaugurating such an exemption.

THE REASON

The exemption recommended herein would provide a legal mechanism whereby a certain religious minority may preserve the integrity of their religious commitment. Our people—many of whom we know as Mennonites or Amish—come from a long history of uncompromising refusal to participate in the military.

Because of this unique but determined position with respect to warfare, we have, since reformation days, fled from the persecution of intolerant religious majorities. We have resisted when insensitive governments required military participation. A great majority of all the Mennonites who came to this country since the late 1600's migrated seeking a land of unrestricted freedom of religious expression, specifically freedom from the military.

We are equally dedicated to the proposition that non-participation in warfare is an essential element of our doctrine and practice. However, non-participation in warfare is not the primary element of our theology. It is secondary in the sense that it is a result of our commitment to Jesus Christ, and our understanding of the demands of the New Testament. Our position, therefore, is not dependent upon our assessment of the relative evil or justness of a particular war, nor is our position dependent upon political, moral or humanistic rationale. We accept Matthew 5, 6 & 7 of the New Testament as a compelling force for designing a life of commitment to Jesus Christ.

This is why we refuse to retaliate. This is the reason we suffer, rather than defend or resist. This is the reason my own great-grandmother, living near Chambersburg, Pa., offered no resistance and no retaliation when Confederate soldiers, on their way to Gettysburg, held her and her children at gunpoint while three (3) soldiers ransacked the house, demanding valuables. They had already taken my folks' grain and horses, as well as food from the pantry. Nonetheless, my great-grandmother, in the spirit of Christ, willingly, without bitterness or malice, fed whomever came to her door—from both North and South.

We are not humanistic pacifists seeking to deny government its right to self-defense and maintenance of internal security. We are peacemakers—not in the sense of international relations—but in the sense of seeking to restore man's relationship to God, who thereupon seeks to live at peace with his fellowmen.

We adhere to the proposition that the New Testament teaches clearly and specifically; an obligation to obey the state (Romans 13:1, I Peter 2:13). We obey the law, no matter how oppressive or distasteful such obedience may be. We believe further, however, that under certain circumstances of conflicting loyalties, we owe a higher allegiance to God than to government (Acts 5:29). Our particular character of Christianity inescapably requires us to refrain from war, violence, or forceful conflict, be it related to national, international, or personal relationships.

The basis for the legislature accepting my recommendations may be stated as follows:

BASIS

Legal. It is my position that the free exercise clause of the First Amendment demands that a religious objector to participation in all warfare be afforded an exemption. Clearly, the free exercise clause offers no protection for the non-religious. Nor does the Constitution guarantee unqualified freedom of conscience. Therefore, the non-religious objector to participation in warfare lacks legal standing, contrasted to the position of the religious objector. Furthermore, to exempt the non-religious objector, which is not constitutionally required, may indeed jeopardize the religious objector's exemption, which I submit that a fair interpretation of the First Amendment requires.

PRECEDENT

Historical. This country has a long history of granting an exemption to individuals who, because of their "religious training and belief", are sincerely (bound by their conscience) opposed to participation in "war in any form". I refer you to the report of the National Advisory Commission on Selective Service of 1967 (Burke Marshall Commission), which concluded that such an exemption was in accord with constitutional guidelines, as well as "wise and right as a matter of legislative policy" (See pp. 48-50)—*In Pursuit of Equity: Who Serves When Not All Serve*, Feb. 1967). In addition, I would like to call your attention to a staff study prepared for the Senate Committee on the Judiciary (October 20, 1965), in which they, after having made an analysis of those individuals who refused to participate in the Vietnam conflict, concluded that although there were those opposed to the Vietnam war for political, social or humanistic reasons, there was a certain group of people who were sincere in their refusal to participate in war because they believed that force is wrong in all circumstances. I submit that precedent should be followed in your Committee's recommendations with respect to registration and/or the draft.

SUMMARY

In summary, I strongly urge that any registration language reported out of this Committee will provide a mechanism at the initial registration stage whereby a religious objector to participation in all warfare may inaugurate exemption claim. Such a mechanism, I submit, will both benefit the government and protect the Christian integrity of those whom I am here to represent.

My plea finds cognizance in the language and intent of the free exercise clause of the First Amendment. In addition, such an exemption has a long history of legislative precedent. Further, such recognition of the religious objector to participation in all warfare is in accord with this country's tradition of the ruling majority protecting the religious liberty of the minority, even in times of great national crisis. We are eternally thankful to God for the United States of America, and for its record of tolerance and protection of our religious beliefs and practices.

Mr. WHITE. Thank you very much.

I will call on Mrs. Holt.

Mrs. HOLT. Thank you, Mr. Chairman, I have no questions. You have given me some real good food for thought. It is a very unusual situation which we really haven't considered.

Mr. LEHMAN. I assume that one of the reasons they are not proposing to go through that exemption procedure now is that it requires the setting up of local boards and additional appropriations, et cetera, and I can understand their position, but I think it will make a real problem for many of our people if we can't inaugurate that claim at that point and start the processing.

Mrs. HOLT. We appreciate your frankness, and we understand you do have some problems. We are trying to get the initial startup moving, and I think that is a very valid point.

Mr. WHITE. Mr. Hillis.

Mr. HILLIS. I have no questions.

Mr. WHITE. Let me say this, Mr. Lehman, I don't believe the administration is going to recommend classification in the initial stages and, of course, if you give them an entry in the classification phase there are others who will want to have that classification opportunity too, as conscientious objectors on religious grounds or whatever, and it would cost considerably more money and it would require a great deal more in terms of expertise on the part of those doing the interviews. The program is contemplated with a post office employee, who would give whatever assistance is needed toward answering specific questions.

An exemption at that time or to go into the elements of religious conscience at that moment would really expand the role and we would probably have to change it all anyway at the time you are called, if you have a tenable position.

Mr. LEHMAN. I understand there are logistic problems. It seems to me as a minimum if there were a place to check that even at that point so that later the computer would spit out a form that would be sent to those individuals.

Mr. WHITE. It couldn't do that because everybody would check it if they knew it would be spit out. Everyone would have to be asked "Why are you a conscientious objector?"

Mr. LEHMAN. Well, I don't have all of the answers to this logistics problem, but I just want to say that I think that my people have a serious problem, if we can't somehow circumvent that.

Mrs. HOLT. Will the gentleman yield?

Mr. WHITE. Yes.

Mrs. HOLT. I think the point that Mr. Lehman made was well taken. It would give a person an opportunity to establish the fact that he was a conscientious objector or whatever, however you want to phrase it, at the outset, and it wouldn't enter into the classification at all. But if he said frequently when a person wanted to object and he was hit with the fact that he never said anything about it prior to the time that mobilization was imminent and maybe one little spot on the card would give him an opportunity to express it.

I know that the chairman is right, we do have real problems with it, and we have got so many problems that we can't really try to create any more, but I think your point is well taken.

Mr. WHITE. With his own church membership, there would be no question because they historically have had conscientious objection.

Mr. LEHMAN. Yes; that is correct, Mr. Chairman, and I know my experience back with Selective Service 10 or 12 years ago, and I didn't deny any of them. The point was that where a claim came in late, particularly after an induction notice, there was a presumption against the sincerity of that claim because they stated rather openly there are not many roads to Damascus experiences, and you had to overcome and rebut that presumption.

Mr. WHITE. I would imagine that if we had a call, that draft boards, who would then be in place—it will be tough because for every man that they don't call, someone is going to have to take his place.

Mr. LEHMAN. Sure.

Mr. WHITE. So, therefore, they have got to be tough, and I think it behooves whoever is advocating conscientious objection to clearly prove his case. We don't have that time in registration. We wouldn't have the time to adequately prove that case, and I don't know that merely checking off a box on the form would be adequate or really useful, frankly. I think that your membership is fully protected.

Mr. LEHMAN. I think if I may make one comment on that. I think in more recent years the Government looked with disfavor upon putting membership as a serious criterion of making that judgment. They felt like—and there was some discussion about the establishment because they felt like it should not be automatic because of that particular

church membership. As a matter of fact, that should be given very little consideration because the religious position was not exclusive to one particular denomination, and I suppose I can understand that position, and I think, however, our problems would be minimal. I would again just emphasize, I think in terms of netting out the available manpower, it may be to the advantage of the Government and from our standpoint certainly protect that persons who thinks that act itself is a part of the military.

Mr. WHITE. This phenomenon which has been occurring lately of individuals who take their home and make it into a church and render themselves a man of the cloth and take a tax exemption. This has happened everywhere and, you know, people today are uncanny about how to be persistent and claim they are conscientious objectors. So I am not really too keen about making it too easy for people to avoid what would otherwise be an obligation to the Nation.

Mr. LEHMAN. I am not suggesting—and I don't want to delay it. I am not suggesting it be made easy. As a matter of fact, I think from a regional standpoint and practical standpoint there may be reason to make exemption narrow, but that would not trouble my people, and the difficulty, I think, that would trouble any people is if the provision were there.

Mr. WHITE. Thank you very much for your testimony today.

Mr. WINCUP. Mr. Lehman. I recall testimony offered in November of this year, I think it was by Dr. Beechy, who was representing a Mennonite Church.

Mr. LEHMAN. Sure.

Mr. WINCUP. As I recall his testimony, he felt there would be a real religious conscience problem for women in the Mennonite Church to even register.

Mr. LEHMAN. A letter came from my Congressman, Bob Walker's office, with respect to that matter in which a couple of my brethren visited the Congressman and expressed that. I think that the bottom line to that is that there may be some of that feeling for various reasons. I think, however, if the legislature opts that we go the route of registration, if we were faced with the situation, not where we are looking at whether or not to register women, but faced with the situation that the law requires women to register, then our obligation to the law in general with our people would override that.

I have talked with a number of our people, including some of our leaders, and I am aware of what you are saying. I am aware of the gentlemen who have been to see our Congressmen. I think, generally speaking, that would be the conclusion in the bottom line.

Mr. WINCUP. There would not then be a religious requirement of your church that women not register. At least it is an open question.

Mr. LEHMAN. As I have indicated here, it is difficult to find a theological basis to make the response different for one or the other. We may say the place of women is in the some and the home is important, and you have heard all that discussion here today, but if we were in the situation where that were the law, then our understanding of our commitment—well, I think would indicate that we must obey that law unless it specifically creates a problem for our commitment.

Mr. WINCUP. Thank you.

Mr. WHITE. I would like to ask a question. We have had several Congressmen testify on bills that they have introduced calling for national public service as an option on a volunteer basis but with certain compulsion behind that, if they didn't want to go in the service. What is the position of your church and the church members on public service as an option or the alternative—not an option but an alternative to service? Suppose your membership says as a conscientious objection, I don't wish to engage in arms, and we say, all right, as long as we have got need in this Nation you will be going to a certain hospital?

Mr. LEHMAN. I think you are aware, Mr. Chairman, that historically we have not been noncooperative where the program was under civilian control, and we have pulled alternative service in recent years, and our people, we found very few who would refuse, given that opportunity as an alternative.

Mr. WHITE. Were there any who as conscientious objectors during the last draft situation served in such capacities?

Mr. LEHMAN. Oh, yes. Yes, we had many, many of our young people who were working in hospitals or on certain kinds of hospital farms or other kinds of public service. You may recall the language of section 6-J. It says "an alternative program that is some service within the national welfare and interest," which was left up to the interpretation of Selective Service and their regulations, and we found no problem in general cooperating with that, and our people in general did cooperate, yes, sir.

Mr. WHITE. Thank you. Mr. Price.

Mr. DAVID PRICE. Thank you Mr. Chairman. Mr. Lehman, could I ask you one question before you go?

Mr. LEHMAN. Yes, sir.

Mr. DAVID PRICE. A very short one. I would like to get a feel for how many people we are talking about who are conscientious objectors merely for planning purposes. I am not confining it to your religious sect, but who else? Do you have a guestimate on it at all?

Mr. LEHMAN. You are talking about men and women?

Mr. DAVID PRICE. Men and women.

Mr. LEHMAN. Some years ago I saw a statement from one of the officials indicating it, and I can speak only from the standpoint of our particular denomination, but at least I saw a statement that there were 120,000 people generally known as the plain sects of North America. I would take that with reservation. And then you have to decipher from that age group that would have been men, women, and children. But there would be a number of thousands, Mr. Price, both men and women.

I saw a figure also in some of the writings that percentagewise—and I suppose this is one reason the legislature has felt that even in time of stress we could accommodate them—percentagewise it is very, very low, in terms of overall manpower situation, less than 1 percent.

Mr. DAVID PRICE. Thank you very much.

The next witness is Karla Goldman, from the Polling Task Force of the Yale College Council.

**STATEMENT OF KARLA GOLDMAN AND MAUREEN CONNOLLY,
POLLING TASK FORCE YALE COLLEGE COUNCIL, YALE
UNIVERSITY**

Miss GOLDMAN. Thank you, Mr. Chairman and members of the committee.

My name is Karla Goldman, and this is Maureen Connolly. We are here representing the Polling Task Force of the Yale College Council, Yale University's undergraduate representative student government.

Decisions that the Congress and this committee make concerning registration and the draft should be informed by the opinions of the young men and women of this country who will be most affected by any draft legislation. To ascertain the feelings of one segment of this population, during the week of February 9, the Polling Task Force of the Yale College Council conducted a random telephone poll of the Yale student body to measure student opinion on issues concerning the draft.

Employing a standard polling procedure, we obtained a response rate of 78 percent from a random sample of 500 names. Of those responding, 62 percent were men and 38 percent were women, from a total Yale population that is 60 percent male and 40 percent female. With our polling procedure, we are 95 percent confident that the results from this poll differ by no more than 5 percentage points from the response that would have been gathered if we had interviewed all Yale undergraduates.

Although student opinion was split on whether registration should be instituted at this time, there was a very strong feeling, 86 percent to 7 percent, that the current political situation does not call for a military draft.

This poll was conducted the week after President Carter announced his plan for the registration of 18- to 20-year-olds. Breaking the results down by age, no discernible differences appear between the responses of those 20 and those over 20.

Opinion was also divided on the issue of college deferments. A slight plurality opposed such deferment, 43 percent against it, 37 percent in favor, and 20 percent uncertain.

The clearest consensus of sentiment reflected by this poll is found in questions involving the possible draft of women; 85 percent of all those polled believed that if registration is instituted, women should be included in that registration; 88 percent of the women polled believed that women should register for the draft.

In the event that conscription is instituted, student sentiment for drafting women was almost as strong; 77 percent of the women polled believed that women should be drafted along with men; 82 percent of the women polled supported a draft that included women, should a military draft be instituted.

There is no clear consensus on whether women should serve in combat if they are drafted; 34 percent of all those polled felt women should be required to fight, 47 percent thought they should not, and 18 percent were uncertain. Among women, opinion was almost evenly divided on whether women should serve in combat.

As representatives of the Yale College Council, the polling task force would like to offer an interpretation of these results. Among the reasons stated in favor of a draft were the need for national security, fear of Soviet aggression, and the importance of a draft as a spur toward national solidarity. Reasons given against the draft included the feeling that national security was not threatened, fear of increasing militarism, and the danger of war.

We believe that the strong response indicating that women should be included in any proposed registration or draft reflects the feeling that equality should exist in all aspects of American life. Many respondents stated that they would support registration of women only if the equal rights amendment were ratified. Generally, the poll indicates a feeling among Yale students that women should share responsibility with men for the security of the United States.

The results of this poll indicate the feelings of the Yale student body, one segment of the population that will be directly affected by the decisions about the draft. We believe that these results are relevant to the determination of policy concerning draft and registration. We hope that you will consider these results seriously, and I would be happy to answer any questions you might have concerning this poll.

Mr. WHITE. Just studying your very interesting result here, how does this square with the national polls that have been taken on the same subject?

Miss GOLDMAN. I haven't seen polls done on other college-age students.

Mr. WHITE. I am not talking about college age. I am talking about the average American, many of whom don't go to college.

Miss CONNOLLY. We have only polled the Yale student body, and we are not sure what the average American would say.

Mr. WHITE. Have you checked the Gallup poll?

Miss CONNOLLY. There was a poll done of students across the country that came out opposed to registration, but I am not sure what the percentage was.

Mr. WHITE. The perception of some of the Congress is that those who are in college generally are more inclined to be against draft and registration than is the average American. You may check that out.

Miss GOLDMAN. I think many people have that perception. The fact that this poll came out on registration. I think there is a feeling I felt that at least at Yale many people feel that registration is just a way to be prepared, but there was a definite feeling against the draft at this time.

Mr. WHITE. I didn't intend to be attacking you or anything like that, but I find it interesting that in some of the other polls, such as at Yale and other places, it appears that there are more people than I have seen in other polls that are ready to support their country. But it seems to me that many times people that have had the most privilege, the most opportunities, are the least ready to respond to their country in case of emergency.

Miss GOLDMAN. It is also true that perhaps people who have been privileged in that way feel more aware of the situation of the United States perhaps in the world and what the real necessity is, what the country really needs concerning their obligation.

Mr. WHITE. It could be a matter of what is being taught to them, too.
Miss GOLDMAN. Yes.

Mr. WHITE. It is an interesting phenomenon, and, of course, polls are always helpful and they are always fascinating. But I think that indicates to me really in addition to the poll there is more support for registration than one could expect from Yale.

Mrs. Holt.

Mrs. Holt. Thank you, Mr. Chairman.

Miss Goldman, I certainly would like to commend you on this poll. I am very pleased to see you really getting into it in depth. I would hope that you wouldn't let this be the end and would continue to probe into some of the things that make people feel the way they do.

Last year, as we started our hearings, I was particularly impressed with a young freshman member who had just come on the committee, and as he sat and listened to the testimony from the Defense Department about the condition of our manpower, he threw up his hands in shock. He said, "I have been out with the American people campaigning, being elected, and I have had no idea that our manpower situation was as bad as it is. Why aren't you telling the American people what the real situation is?" So I would urge you to continue your efforts, having gone into this as thoroughly as you have, to make certain that people are getting accurate information when they make their decisions. Do some probing about where they are coming from, what makes them tick. I deeply appreciate your efforts. Thank you for coming here and sharing your information and ideas, and we will certainly give them careful consideration.

Mr. WHITE. Mr. Hillis.

Mr. HILLIS. I want to join the committee members in commending these two young ladies for coming and sharing this with us. I think my colleague, Mrs. Holt, has hit on a point. We all perhaps get a point of view from our own perspective, and, of course, we come from different backgrounds, and we all have different perspectives, but it is very important in this committee to try to get an objective overview.

I would say my overview of the college community up to this point was that they are pretty dead set against registration and the draft. I think your survey shows that that is not true; that there is a difference of opinion among young people themselves as to whether we need this, what our obligations are, and it is very enlightening to see how young women address this point of registration because I have heard reports back from college campuses in the Midwest where college sorority girls say, "I will get pregnant before I will go into service," and things like this. It was rather shocking.

I was up in New Hampshire a few weeks ago right before the primary and happened to hear some noise and a big parade coming down the street of all young people, "Stop the Draft," and carrying signs of all description, and, as we got near the end of the parade the signs changed and one was sponsored by the Social Workers Alliance. There is an effort being made to organize and proselytize young people into a coalition much as we saw in Vietnam against the so-called establishment and the need to defend our country and the military and so forth.

I think your poll shows that isn't true. It is a subject on which there has always been deep division about in this country. Prior to World

War II the draft only passed the Congress by one vote right before Pearl Harbor—by one vote—and I don't know where we would be today if we hadn't started to prepare. I think you have addressed a problem and gotten the young people thinking about the problem—many of them realize we have got a problem.

I appreciate your being here and I want to congratulate you. I know you have been here for a long time, and I don't know whether you have been before a congressional committee before or not, but I certainly appreciate that you are here today before this one.

Miss GOLDMAN. I would like to add that there has been some demonstration made against the draft at Yale. You can see here there is a very sharp feeling against the draft, but I guess the question of whether the country should be prepared in case of a threat to national security is a question that the students are split on.

Miss CONNOLLY. I feel that when the poll was done 1 month ago the question of registration was very separate from the draft in many people's eyes, and that now, as I see those words used interchangeably here almost in some cases, I would assume that the Yale student body would be more opposed to registration as it seemed more closely connected to the draft.

Mr. HILLIS. You understand the hearing today is on registration only. We are not considering a draft here.

Miss CONNOLLY. I know that everyone considers one linked with the other, and I think that becomes clear.

Mr. HILLIS. This committee tries to be objective. This is the committee that was faced with the decision as to whether women should be admitted to the academies. We had a lot of hearings and debates about that and soul searching, and we decided that should be. It started out of this committee. In fact, I was the one who offered it in this committee to permit women to serve on combat vessels in peacetime. So we are not oriented one way or the other as far as equality is concerned and the treatment of women, but we are trying to be objective on this issue as well, and you have helped us, I think.

We understand there is a deep division on it among particularly young people.

Miss CONNOLLY. I am speaking as a woman at Yale and that was close to women 10 years ago. I feel very strongly about the ability of women to enter fields they haven't been in before, and closing the military is one obvious area that students oppose, and having had the privilege to go to Yale, I would hope that women would be allowed to serve.

Mr. HILLIS. You understand the women are only barred from combat—only about 5 percent of the MOS's we are discussing.

How do you feel about women in combat? Do you think they should be permitted?

Miss CONNOLLY. Obviously, the poll is split here. I have a different opinion than the majority of the poll in general, but I feel that the Yale women's team was the best in the country and is very strong and capable of entering combat, and I don't believe distinctions made on gender should be held, but distinctions based on actual physical capability.

Mr. HILLIS. Thank you.

Mr. WHITE. Thank you, very much.

One reason that there is confusion in many people's minds about registration and preparation to draft because the organizations that would try to defeat registration 5 months ago had a very calculated campaign on those two topics. They sent out a considerable amount of literature saying they are one and the same thing. They even had arguments on the floor that they are one and the same thing. Of course, the fact is to get the draft you have to have a separate act of Congress, and that is what I am sure would be a very demanding experience in itself, so at this time this committee is not talking about the draft, they are talking about standby registration, which could lead to the draft, but only after an act of Congress, only with appropriate evidence to convince the Congress that this is the thing to do.

This is an interesting survey that I am sure would be of interest to those who may come down to Washington.

I think on March 17 there is going to be a big rally here. There have been two Gallup polls prepared here and I am going to poll my own district. I might find some interesting results. I think this is very enlightening, and I thank you for your initiative and for waiting and for coming before us. Please say anything further that you have gleaned from your student body.

MISS GOLDMAN. Thank you.

MR. WINCUP. I would like to ask you two questions, if I might. Have you done a poll over time on these issues? Was there a poll done prior to the President's announcement or last year on this consideration?

MISS GOLDMAN. No, this is the first. It was done immediately after the President's announcement.

MR. WINCUP. Just one other point. You have made the observation that in the aggregate people don't like the draft, but do you have a sense or has any estimate been made as to how Yale students regard the All-Volunteer Force, the current position, the demographic make-up, and what implication that has for our society? Has that issue ever been addressed?

MISS CONNOLLY. I think the split reflects some concern over the fact that the Volunteer Army might not be capable of handling any acts of aggression or necessity to protect national security, but nevertheless there is a significant minority of 40 percent who feel there is no need for registration.

MR. WHITE. Mr. Hogan.

MR. HOGAN. I have one question. Maureen, is that your name?

MISS CONNOLLY. Maureen.

MR. HOGAN. Maureen, do you think that the women from Brown and Harvard would do as well in combat as the women from Yale?

MISS CONNOLLY. Certainly not.

MR. HOGAN. Thank you Mr. Chairman.

MR. WHITE. We will do a survey on that one, too.

Thank you very much for your appearance today.

This being the last witness today, that concludes the hearing. Tomorrow we will have to markup in room 2337 on the question of registration of women. That is at 2 o'clock in the afternoon.

Thank you very much for coming.

[Whereupon, at 3:20 p.m., the subcommittee adjourned.]

MARKUP

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY PERSONNEL SUBCOMMITTEE,
Washington, D.C., Thursday, March 6, 1980.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2337, Rayburn House Office Building, Hon. Richard C. White (chairman of the subcommittee) presiding.

Mr. WHITE. The subcommittee will come to order.

The subcommittee meeting this afternoon is for the purpose of marking up H.R. 6569, to permit the registration of women.

We have spent a great deal of time looking into the issue of women in the military and registration of women, both in formal hearings and a review of legal opinions and studies submitted to the committee. Even though the issue is, I think, well understood by all at this point, I would hope we can have a discussion of the issue before we vote. In that vein, I would like to offer some comments on how I view this issue.

In the past, and particularly the recent past, there have been a number of proposals to use the military to assist in a variety of social functions in this country. The military is not a proving ground for social experiments. It is important to realize that we don't pay to establish a military for these purposes. We pay huge sums each year to train and equip a military force to protect this Nation's security, principally by deferring conflict. In supporting the military, though, we don't want to pay more than is required to provide for an adequate national security posture.

The issue before us this afternoon is largely a result of the problem that exists in the capacity of the All-Volunteer Force to mobilize for an emergency. This is a problem that needs to be solved. While a major protracted conventional conflict may or may not be a likely scenario, the maintenance of a capability to defend the Nation and protect its vital interests in such a situation effectively deters the likelihood of such a conflict.

With the Selective Service System in its current posture, or even in an upgraded posture—but still dependent on contingency plans that can never be adequately tested—the Nation's ability to mobilize in an emergency and produce sufficient forces to defend itself in a timely manner is not credible.

If this Nation were required to mobilize and engage in a conventional conflict, we would be extremely short of trained personnel in combat skills. The demand for personnel in combat skills is particularly sharp in the early months of such a conflict. The requirement for the Selective Service System to be in an active posture and produce personnel immediately in an emergency is principally to provide combat replacements.

Peacetime registration places the Selective Service System in a posture where it can process and induct the necessary personnel in the time required to meet these early demands for combat replacements. The only reason to require peacetime registration is to develop the capability to provide sufficient personnel to meet this anticipated demand for combat replacements.

The law only permits men to serve in combat roles. Because of this, there is simply no reason to register women at this time to meet the contingency underlying the peacetime registration proposal. Adding women to the pool of registrants will only hamper Selective Service's capability to process people for induction in this critical period since women can't be used for combat positions.

If the unthinkable occurs and we get into a conventional conflict of extended duration, this country may well find it necessary to register women, as well as more men, for possible induction. We have time to make that decision after mobilization. The problem today is to prepare for the early months of such a contingency.

Although tangentially related to the registration proposal, the proposal concerning women in combat should also be addressed because the underpinnings of the decision not to register women relate to the fact that combat personnel only are required for this early period.

I have to say personally that I would have a hard time ever supporting placing women in combat, but what has been very clear to me during the course of our hearings is that there is no direct evidence in existence on the impact of a decision to place women in combat. No capability exists to determine which women could meet the physical demands of the combat environment, to say nothing of the psychological demands. There is no meaningful way in existence to make such a selection. Further, there has been no substantial evidence developed on the impact on the cohesiveness and discipline in combat units of assigning women along with men.

What we do know is that rigid discipline is necessary in the combat environment in order for a military force to be effective. We don't know what the assignment of women will do. It seems to me that it would be irresponsible to disrupt the historically proven equation for producing combat units by introducing women into such units in combat skills without understanding the impact of the action. It could seriously affect our national security.

Therefore, since women will not serve in combat skills, I see no reason to register them in peacetime to resolve a specific deficiency in our mobilization capability which relates solely to combat personnel.

At this time, I would like to outline to the members of the committee the parliamentary options before us—just to refresh your minds.

The subcommittee can report the bill to the full committee favorably, unfavorably, or without recommendations; that is, each one would be a separate motion in itself. If the members of the subcommittee choose, it would also be in order to move to lay the bill on the table. A motion to table the bill would end consideration of the bill in the subcommittee, but not necessarily in full committee.

Let me point out this further, that in the event that a motion is made to table, that in itself cuts off debate and if a member chooses to make the motion that we get prior knowledge of this so that we will

have the opportunity—each of us—to state any position that we desire to state.

At this time, the Chair lays before the committee for action, H.R. 6569, and asks if there are any amendments thereto.

[No response.]

There being no amendments, the Chair will entertain a motion.

Mr. MONTGOMERY. I will just wait. I will make the motion to lay it on the table at the proper time, if the Chair has no objections to that.

Mr. WHITE. The Chair will recognize the gentleman at the proper time.

The Chair will give the opportunity to the membership to discuss the bill, their position, their observations or their view of the evidence that has been presented.

Mrs. Holt, do you have anything you would like to say at this time?

Mrs. HOLT. Thank you. Mr. Chairman.

I think the testimony that we've heard, the evidence that we've heard, has been very clear that the U.S. military manpower shortages are currently and have always occurred in combat arms billets, and there is just absolutely no need to include women in this registration that we are proposing.

The issue is not whether women are capable of serving as effectively as men. I contend that women can do anything better than men. That's not the point. They have demonstrated their skills and their leadership and their patriotism while in uniform; they are doing it right now. It certainly is not that women are being deprived of equal professional and career opportunities.

The military is a unique institution, and I think that this committee has got to take into consideration that national security must be the final arbiter of our military policies.

Thank you, Mr. Chairman.

Mr. WHITE. Thank you, Mrs. Holt.

Do any other members wish to make any statements now?

Mr. Hillis?

Mr. HILLIS. Mr. Chairman, I appreciate the opportunity of being recognized at this time. I certainly want to go on record pretty much in the same vein that my colleague, Mrs. Holt, has taken.

I cannot support this legislation for the same basic reasons that have been stated, in that I feel that there has been no evidence shown of the necessity, and I think the committee's duty here is to try to provide necessary manpower to meet the missions that are assigned to the military. Arguments that go to other matters, I think, are extraneous in meeting the primary function of the committee.

For that reason, when I heard the figures given yesterday, perhaps out of a pool of 4 million, 80,000 might be needed, you are talking of 1 or 2 percent of the available registered womanpower of the age brackets involved, and it seems to me that the expense and effort of such a registration is economically unjustified and is absolutely unnecessary, and it could be met by volunteers and that's what should be tried first.

For that reason, I would like to go on record as opposing the administration in this regard.

Mr. WHITE. Is there any other discussion?

Mr. Montgomery?

Mr. MONTGOMERY. Thank you, Mr. Chairman.

I am opposed to requiring women to be registered with the Selective Service System, and after each member has had the time to discuss the legislation, I would like to be recognized to make the motion to lay this bill on the table.

There are really three basic reasons why I am opposed to having women registered with the Selective Service System. The first is, Mr. Chairman, we don't need women to be registered or to be mobilized. We have a good quality of women in the service now through the volunteer system and they are filling up these support roles. As the Assistant Secretary of Defense for Manpower testified before this committee 2 days ago, he said if we had to have mobilization, the first ones we would draft would be young men to fill up the combat positions and learn a military skill. We don't need women.

Second, I am very sincere when I say that I think by requiring women to register, it would really be the first step to putting them in combat positions. At this time, women are serving in support positions but in combat units, and I am concerned that if you put a combat unit into a fight or combat, some of these women could get hurt by being in support positions. But requiring them to register is further pushing them into the combat roles.

Third, and I think this probably makes as much sense as the other two items that I've mentioned, we have found out from the Director of the Selective Service System that he is going to have a hard, hard time just getting registration going for men, and to register 4 million young men by the end of this year is going to be a tough, tough job. Why double the work of the Selective Service System by requiring them to register 4 million additional women who we do not need.

We need the men. We need to know who they are and where they are, it just makes sense to me, let's don't double the work of the Selective Service System, let's let them going on men; that's what we need and that's what we ought to have.

Thank you, Mr. Chairman.

Mr. WHITE. Is there any other discussion?

Mr. KAZEN. Mr. Chairman, I feel like my colleagues who have just spoken. I don't believe at this time we can truly support the idea of registering our women. I believe that we should continue our voluntary program, and if the need should ever arise, I believe that we can get, for the MOS's that we will need, enough women to volunteer to where we could have a balanced armed force in any of the services.

I would hate at this time to continue the debate as to whether or not women are going to be drafted for combat. I think that the testimony before his committee clearly shows that the majority of the American people do not believe that women should be drafted for combat service. And even though this bill has nothing to do with the draft at this particular time, I would hate to waste all of the time of the Congress debating that question which has nothing to do with this bill.

In addition to all of the other reasons that have been stated here, economic, time consuming and so on, I just don't believe that at this particular time I could vote to have women register.

Mr. WHITE. Any other discussion?

Mr. Won Pat?

Mr. WON PAT. Mr. Chairman, I think that the main issue that concerns all of us of the committee is the registration of women. It's a matter of record, that I am in favor of the registration of both men and women.

I am not going to argue about the capabilities of each sex. We recognize, of course, the biological difference between men and women. We ought to know that in our society women must have also equal rights with men, and we have seen that women have demonstrated that they can challenge men in their field of endeavor.

Now, I am not advocating that women should be drafted, but I do advocate that all males and females in our country of eligible age should be registered. It is important for us to have a mechanism to know who we have to identify and classify in case of emergency. I am very sure that everybody will be affected, men as well as women.

That is the essence of my position, Mr. Chairman.

Mr. KAZEN. Mr. Chairman, may I?

In response to what my colleague from Guam has just said, I don't believe that registration, Mr. Won Pat, automatically carries with it classification or even physical examination. We are only concerned with getting an inventory of our manpower, and that is all that is involved in this bill.

Mr. WHITE. Well, classification would follow on mobilization. Mr. Won Pat understands that, I am sure.

Mr. KAZEN. At the time, if we ever need to reinstate the draft, then it would become effective at that time, but for the time being, Mr. Chairman, my understanding is that this will simply—that the men will simply be registered in order to find out just what our manpower situation is, how many we have, where they are, and if we should ever reinstitute the draft, then, at that time, of course, we should immediately classify them and give physical examinations and whatever else it takes in order to—the testimony before this committee has been save 60 to 90 days.

Mr. WHITE. If there is no further discussion, the Chair has a viewpoint that he'd like to express as well.

The purpose of registration in the first place, as we tried to have enacted last year—some 5 months ago—was the recognition that our Reserve Forces were deficient; that we had something up to 500,000 short in the Individual Ready Reserve; about 130,000 short in the National Guard and in our Reserve Forces; and that our Selective Service System was in a shambles and could not meet mobilization requirements. We felt that by having a standby registration of males at 18 years of age, according to that bill, we would cut off something like 2 months. General Rogers testified the other day that it would be 3 months. He had previously been director of personnel of the Army. But the administration at that time, in opposition, came up with an idea of 7 days, 13 days, which I think is entirely ambitious and overoptimistic and is not realistic.

However, the purpose of standby registration is to develop a reservoir of manpower that could be called up and trained within 4 months, be placed in the field as replacements for the inevitable losses that we

would have, and also to add to the perception of the strength of this Nation.

Now, those are for combat purposes. It is not anticipated or expected or desired by anyone—except one witness before this committee—that women be placed in combat. That is not the intention of the policy of the administration at this time. Therefore, since we are calling for standby registration for the purpose of developing a reservoir for combat purposes, and since women would not be used in combat, I see no need at this time—at this time, I am saying—to call for the registration of women. There would be ample time in the event that the need arises in order to do that.

There was testimony that women would then displace those other men who could then fulfill combat roles, but on further interrogation, it developed that would be something in the nature of 18,000 to 19,000, and I do not see the need to register some 4 million women the first year, 2 million on the following January, in order to fill 19,000 positions, especially since women are volunteering very well, and by 1985, will constitute something like 13 percent of our armed services.

It would be an extra cost to the taxpayers of this country. In addition, it would probably cause a delay in the progress of registration because of the threatened filibuster in the Senate which would be inevitable, I am sure.

The President will make a proclamation as to the registration of men. This committee does not have to take any action on the registration of men insofar as the President has that power and has enunciated that he will exercise it. Of course, whatever we do, I am sure it will be tested by the courts.

Mrs. HOLT. Mr. Chairman?

Mr. WHITE. Yes, Mrs. Holt.

Mrs. HOLT. One point that you made that I really think should be clarified. I certainly agree with everything that you have said and you have said it very well.

The study that was done by the administration was, during the course of our testimony here, discredited and there was a complete turnaround on it. I hear a lot of people saying that the 7 days or the 13 days is an argument against registration, but I think that point should be made, that they had backed down completely on that study.

Mr. WHITE. The kindest thing they say about it is that it was "overoptimistic."

At this time, there being no further discussion, the Chair will recognize Mr. Montgomery for a motion.

Mr. MONTGOMERY. Mr. Chairman, I move that the bill, H.R. 6569, be laid on the table, and I would like to ask for a rollcall.

Mr. WHITE. A second?

Mr. HILLIS. I second.

Mr. WHITE. All of those in favor of a rollcall, signify by raising your hand.

Well, we had three. That's all we need.

Will counsel call the roll?

Mr. MONTGOMERY. A parliamentary question. If you are opposed to women being registered, you vote aye.

Mr. WHITE. The bill as it stands.

Mr. MONTGOMERY. Right.

Mr. NEDZI. Does that presume that if you vote no, you are on the other side of that specific issue? That in't the question.

Mr. WON PAT. That isn't the question. The question is to lay the bill on the table.

Mr. WHITE. This is a motion to lay on the table, and I think Mr. Montgomery was posing it as a fact of position.

Mr. NEDZI. That may be his position.

Mr. WHITE. Well, fine. In that sense, all we are voting on is to table the bill which, in substance, lays the bill on the table without further discussion and does not take any further action on the part of the full committee.

Mr. HOGAN. Or the subcommittee.

Mr. WHITE. Or the subcommittee.

Mr. HOGAN. It doesn't preclude the full committee.

Mr. WHITE. The full committee can, by unanimous consent or by motion, bring up the bill. It's true, but as far as our report to the committee or action of this subcommittee to the full committee, it is final from this source.

All right. Will counsel call the—

Mr. NEDZI. There is no action by this committee.

Mr. WHITE. If you table the bill, then that lays the matter at rest.

Mr. WINCUP. Mr. White?

Mr. WHITE. Aye.

Mr. WINCUP. Mr. Montgomery?

Mr. MONTGOMERY. Aye.

Mr. WINCUP. Mrs. Holt?

Mrs. HOLT. Aye.

Mr. WINCUP. Mr. Kazen?

Mr. KAZEN. Aye.

Mr. WINCUP. Mr. Won Pat?

Mr. WON PAT. No.

Mr. WINCUP. Mr. Treen?

Mrs. HOLT. Aye by proxy.

Mr. WINCUP. Mr. Nedzi?

Mr. NEDZI. Aye.

Mr. WINCUP. Mr. Nichols?

Mr. WHITE. Mr. Nichols is out of town.

Mr. MONTGOMERY. I have his proxy. Mr. Nichols votes aye.

Mr. WINCUP. Mr. Hillis?

Mr. HILLIS. Aye.

Mr. WINCUP. Mr. Chairman, the vote is 8 to 1 in favor of the motion.

Mr. WHITE. The vote is 8 ayes and 1 no. The motion carries. H.R. 6569 will lay on the table.

[The subcommittee did not recess, but continued on to the markup of H.R. 6406.]

